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Other Regulations & Procedures

U.S. Department of Labor
Occupational Safety and Health Administration
1978

Volume IV OSHA 2080

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Other Regulations & Procedures

MARCH, 1978

CHANGE 15, September 17, 1982

U.S. Department of Labor
Raymond J. Donovan, Secretary

Occupational Safety and Health Administration
Thorne Auchter, Assistant Secretary

Volume IV OSHA 2080

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Introduction

The Occupational Safety and Health Act of 1970 became a law on December 29, 1970. Its purpose is:

> **"To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes."**

This volume of Occupational Safety and Health Regulations and Procedures is comprised of statements of policy and methods of implementing the provisions and requirements of the Williams-Steiger Occupational Safety and Health Act of 1970.

Parts included in this volume were originally published in the Federal Register. They were subsequently codified and republished in the Code of Federal Regulations.

Only the Federal Register can be used as the official source or reference for such material. Every effort has been made to repeat verbatim the information published in the Federal Register—however, in the event of conflict or inconsistency, the Federal Register takes precedence as the official publication.

The purposes of publishing this set of regulations and procedures are (1) to facilitate their use through a different and easier format of the material (finding and reading specific sections and paragraphs have been greatly enhanced); and (2) to create a publication system for occupational safety and health regulations, standards, and procedures which can be more easily maintained and revised. These regulations are available through the subscription services of the Superintendent of Documents, U. S. Government Printing Office.

Instructions

Numbering System

The format of this volume is changed from that of the Federal Register to enhance usability and to provide for easier location of referenced section, paragraph, and subparagraph numbering.

Paragraph identification levels are set in boldface types. The first paragraph identification is set flush left; each succeeding breakdown level is indented one space to the right. Breakdown setup and types used for each are as follows:

(a) General

 (1) Definition

  (i) Where oxygen --

   (a) Designed, constructed ----------------------------------

    (1) Boiling point shall ----------------------------------

     (i) Hotel shall mean ----------------------------------

All pages are numbered consecutively throughout.

Changes and Additions

From time to time revised pages and additions will be published to continually improve the value of this publication. Such changes and additions will be sent to authorized holders and subscribers.

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Changes on each page will be identified by a vertical bar along the outer margin of the text, tabulation, or illustration affected. The change number of the revision will be shown at the bottom of that page.

Pages which have been revised should be removed and replaced with the newly revised versions. Additions should be inserted in the appropriate places of the volume.

Appendices

A subject index for this volume and a listing of the contents of the other volumes in this series are included in the Appendices.

PART 1901

PROCEDURES FOR STATE AGREEMENTS

1901.1 Purpose and scope.
1901.2 Alternative to Federal preemption.
1901.3 Making of agreements.
1901.4 Action upon requests for agreements.
1901.5 Termination of agreements.
1901.6 Exclusion.
1901.7 Delegation of authority.

AUTHORITY: The provisions of this Part 1901 issued under secs. 8(g), 18(h), 84 Stat. 1600, 1609; 29 U.S.C. 1667.

SOURCE: The provisions of this Part 1901 appear at 36 F.R. 7006, Apr. 13, 1971, unless otherwise noted.

1901.1—PURPOSE AND SCOPE

(a) This part interprets and applies section 18(h) of the Williams-Steiger Occupational Safety and Health Act of 1970. Section 18(h) provides that the Secretary of Labor may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under section 18(b), or 2 years from the date of enactment (which will be December 28, 1972), whichever is earlier.

(b) Under this part, agreements for temporary periods are permitted with any State which desires to continue to enforce any State occupational safety for health standard or standards that are in effect when a Federal standard or standards covering the same issues become effective or which become effective thereafter. Continuance of enforcement pursuant to an agreement under this part means a maintenance of State enforcement without any diminution in the level of enforcement activity. Thus, a State party to an agreement under section 18(h) may not diminish its level of enforcement activity respecting standards covered by the agreement below that existing at the time of agreement.

(c) The requirements of this part shall be considered incorporated by reference in any agreement entered into under section 18(h) of the Act.

1901.2—ALTERNATIVE TO FEDERAL PRE-EMPTION

Section 18(a) of the Act is read as preventing any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which a Federal standard has been issued under section 6 of the Act. Section 18(h) permits the Secretary to provide an alternative to the exclusive Federal jurisdiction on such occupational safety or health issue. This alternative is temporary and may be considered a step toward the more permanent alternative to exclusive Federal jurisdiction provided by sections 18 (b) and (c) following submission and approval of a plan submitted by a State for the development and enforcement of occupational safety and health standards. Agreements under section 18(h) are temporary in that they cannot continue beyond December 28, 1972, or the date of approval of the State plan under section 18(c), whichever occurs first.

1901.3—MAKING OF AGREEMENTS

(a) Who may make agreements.

The Secretary may make an agreement under section 18(h) of the Act with any State agency designated for that purpose by the Governor. Where other State agencies or agencies of political subdivisions of the State have responsibility for enforcement of State occupational safety and health standards covered by the agreement, the State agency designated under this paragraph shall take the necessary action to insure that such other agencies will implement and adhere to the agreement.

(b) Commencement of negotiations.

Negotiations for making an agreement may be commenced by the Governor of the State, or a State agency which may be designated for this purpose under paragraph (a) of this section, by filing an application in writing with the Secretary. No particular form of application is required. The contents of the application shall be those described in subparagraphs (1) through (5) of paragraph (c) of this section.

(c) Contents of the agreement.

Any agreement, including any modification thereof, shall be in writing and shall contain the following:

(1) A brief description of each State standard or standards which are the subject of the agreement, including any pertinent legislative or regulatory citations. The description shall include a statement of the occupational safety or health issue covered by each standard, and shall specify the coverage of the standard (e.g., as to such matters as covered industries, hazards, establishments, etc.).

(2) The names, addresses, and telephone numbers of the agency or agencies of the State, including any political subdivisions of the State, which have any responsibility for administering and enforcing the State standard or standards. The names, addresses, and telephone numbers of the heads of such agencies shall also be listed. The requirements of this paragraph shall not apply to any agency having only judicial or quasi-judicial responsibilities.

(3) A description of the enforcement program and procedures used by each agency administering the standard or standards. In his discretion, the Secretary may require detailed information concerning such programs and procedures, with the degree of specificity turning upon the nature of the standard or standards involved, the number of employees covered by such standards, and any other pertinent considerations.

(4) The dollars and approximate man-years allocated within each agency having responsibilities for the administration and enforcement of each State standard covered by the agreement during the previous fiscal period, and current fiscal period, and a description of the fiscal period.

(5) Notice of intention to submit plan under section 18(b): The State agency shall agree

(i) To submit a notice of intention to file a section 18(b) plan within sixty (60) days following publication in the FEDERAL REGISTER of procedures for the submission of such plan under section 18(b) and for their approval under section 18(c); and

(ii) To submit such a plan under section 18(b) within nine (9) months following the filing of a notice of intention. In lieu of submitting the notice, the State agency may agree to submit a plan under section 18(b) within the prescribed 60-day period, which plan may be expected to meet the requirements established under section 18 (b) and (c) with little or no modification thereof.

(6) A brief description of the Federal occupational safety or health standards dealing with the same issues as the State standards which are the subject of the agreement.

(7) The agreement shall include provisions whereunder the Secretary shall inform the State agency of his enforcement activities within the State with respect to Federal standards referred to in any agreement. (See § 1901.6.) Similarly, the agreement shall also provide that the State agency be required to make such reports to the Secretary regarding activities performed under the terms of the agreement as he shall require.

(8) The Secretary may add such further provisions as he may consider appropriate under the circumstances of the standards issue involved.

(d) When agreements will be made.

(1) The commencement of negotiations for the making of an agreement concerning any pertinent standard should be undertaken as early as is practical before the effective date of the Federal standard involved.

(2) In view of the directive to the Secretary under section 6(a) for the adoption of established Federal standards and national consensus standards as promptly as possible after the effective date of the Act, agreements may be entered into before the issuance of such standards, which agreements shall be contingent upon their adoption.

(3) Negotiations for making an agreement may be commenced before the effective date of the Act, but any agreement resulting from such negotiations shall not be valid or adopted until that effective date.

(e) Restriction.

As a matter of policy, in making agreements under this part the Secretary shall be mindful of the restriction on making plans, contained in section 18(c)(2) of the Act, to the effect that plans will not be approved concerning standards which unduly burden interstate commerce when applied to products which are distributed or used in interstate commerce.

1901.4—ACTION UPON REQUESTS FOR AGREEMENTS

The State shall be notified within a reasonable time of any decision concerning a request for agreement. If a request is denied, the State shall be informed in writing of the reasons therefor. If a request is granted or an agreement is otherwise made, notification to that effect shall be published in the FEDERAL REGISTER.

1901.5—TERMINATION OF AGREEMENTS

(a) Either the Secretary or the State agency which is a party to the agreement may terminate the agreement upon the delivery of written notification to that effect not later than 10 days before the date of termination. Any termination under this paragraph shall not affect the disposition of any pending State cases.

(b) In no event shall an agreement under this part continue in effect beyond the time when final action is taken by the Secretary with respect to a plan submitted by a State under section 18(b) of the Act or December 28, 1972, whichever is earlier. However, the termination of an agreement under this paragraph is not considered to affect any proceeding already commenced under the State law.

(c) The Secretary may terminate any agreement where a State fails to comply with the requirements of paragraph (c)(5) of § 1901.3.

[36 F.R. 7006, Apr. 13, 1971 as amended at 37 F.R. 26008, Dec. 7, 1972.]

1901.6—EXCLUSION

This agreement does not restrict in any way the authority and responsibility of the Secretary under sections 8, 9, 10, 13, and 17 of the Act with respect to the Federal standards referred to in any agreement.

1901.7—DELEGATION OF AUTHORITY

The powers of the Secretary under this part shall be exercised by the Assistant Secretary of Labor for Occupational Safety and Health who is empowered to subdelegate such powers. The Assistant Secretary may, at any time, upon his own motion or upon petition by any interested persons, amend any of the rules in this part.

PART 1902

STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

SUBPART A—GENERAL

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1902.2 General policies.

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[40 F.R. 54780, November 26, 1975.]

SUBPART E—DELETED [40 F.R. 23465, May 30, 1975.]

AUTHORITY: The provisions of this Part 1902 issued under sections 8(g), 18, 84 Stat. 1600, 1608; 29 U.S.C. 657g, 667.

SOURCE: The provisions of this Part 1902 appear at 36 F.R. 20751, Oct. 29, 1971, unless otherwise noted.

SUBPART A—GENERAL

1902.1—PURPOSE AND SCOPE

(a) This part applies the provisions of section 18 of the Williams-Steiger Occupational Safety and Health Act of 1970 (hereinafter referred to as the Act) relating to State plans for the development and enforcement of State occupational safety and health standards. The provisions of this part set forth the procedures by which the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) under a delegation of authority from the Secretary of Labor (Secretary's Order No. 12–71, 36 F.R. 8754, May 12, 1971) will approve or reject State plans submitted to the Secretary. In the Act, Congress declared it to be its purpose and policy "* * * to assure so far as possible every workingman and woman in the Nation safe and healthful working conditions and to preserve our human resources" by, among other actions and programs, "* * * encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational and health laws * * *." Section 18(b) provides that any State which desires to assume responsibility for the development and enforcement therein of occupational safety and health standards relating to issues covered by corresponding standards promulgated under section 6 of the Act shall submit a plan for doing so to the Assistant Secretary.

(b) Section 18(c) of the Act sets out certain criteria that a plan which is submitted under section 18(b) of the Act must meet, either initially or upon modification, if it is to be approved. Foremost among these criteria is the requirement that the plan must provide for the development of State standards and the enforcement of such standards which are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 of the Act which relate to the same issues.

(c)

(1) If the Assistant Secretary approves a State plan submitted under section 18(b), he may, but is not required to, exercise his enforcement authority with respect to Federal standards corresponding to standards approved under the plan until he determines, in accordance with section 18(e) of the Act, on the basis of actual operations under the plan, that the State is applying the criteria of section 18(c) of the Act. The Assistant Secretary shall not make this determination

(i) For at least 3 years after initial approval of the plan, and

(ii) In the case of a developmental plan approved under § 1902.2(b), until the State has completed all the steps specified in its plan which are designed to make it at least as effective as the Federal program and the Assistant Secretary has had at least 1 year in which to evaluate the program on the basis of actual operations. After the determination that the State is applying the criteria of section 18(c) of the Act, the Assistant Secretary's enforcement authority shall not apply with respect to any occupational safety or health issued covered by the plan. Notwithstanding plan approval and a determination under section 18(e) that the section 18(c) criteria are being followed, the Assistant Secretary shall make a continuing evaluation, as provided in section 18(f) of the Act, of the manner in which the State is carrying out the plan.

(2) Federal enforcement authority which must be retained by the Assistant Secretary until actual operations prove the State plan to be at least as effective as the Federal program, will be exercised to the degree necessary to assure occupational safety and health. Factors to be considered in determining the level of Federal effort during this period include:

(i) Whether the plan is developmental (i.e., approved under § 1902.2(b)) or complete (i.e., approved under § 1902.2 (a)).

(ii) Results of evaluations conducted by the Assistant Secretary.

(3) Whenever the Assistant Secretary determines, after giving notice and affording the State an opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the plan or any assurance contained therein, he shall withdraw approval of such plan in whole or in part, and upon notice the State shall cease operations under any disapproved plan or part thereof, except that it will be permitted to retain jurisdiction as to any case commenced before withdrawal of approval whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(4) A determination of approval of a State plan under section 18(e) does not affect the authority and responsibility of the Assistant Secretary to enforce Federal standards covering issues not included under the State plan.

(d) The policy of the Act is to encourage the assumption by the States of the fullest responsibility for the development and enforcement of their own occupational safety and health standards. This assumption of responsibility is considered to include State development and enforcement of standards on as many occupational safety and health issues as possible. To these ends, the Assistant Secretary intends to cooperate with the States so that they can obtain approval of plans for the development and enforcement of State standards which are or will be at least as effective as the Federal standards and enforcement.

(e) After the Assistant Secretary has approved a plan, he may approve one or more grants under section 23(g) of the Act to assist the State in administering and enforcing its program for occupational safety and health in accordance with appropriate instructions or procedures to be promulgated by the Assistant Secretary.

1902.2—GENERAL POLICIES

(a) Policy.

The Assistant Secretary will approve a State plan which provides for an occupational safety and health program with respect to covered issues that in his judgment meets or will meet the criteria set forth in § 1902.3. Included among these criteria is the requirement that the State plan provide for the development and enforcement of standards relating to issues covered by the plan which are or will be at least as effective in providing safe and healthful employment and places of employment as standards promulgated and enforced under section 6 of the Act on the same issues. In determining whether a State plan satisfies the requirement of effectiveness, the Assistant Secretary will measure the plan against the indices of effectiveness set forth in § 1902.4.

(b) Developmental Plan.

A State plan for an occupational safety and health program may be approved although, upon submission it does not fully meet the criteria set forth in § 1902.3, if it includes satisfactory assurances by the State that it will take the necessary steps to bring the State program into conformity with these criteria within the 3-year period immediately following the commencement of the plan's operation. In such case, the State plan shall include the specific actions it proposes to take and a time schedule for their accomplishment not to exceed 3 years, at the end of which the State plan will meet the criteria in § 1902.3. A developmental plan shall include the date or dates within which intermediate and final action will be accomplished. If necessary program changes require legislative action by a State, a copy of a bill or a draft of legislation that will be or has been proposed for enactment shall be submitted, accompanied by (1) a statement of the Governor's support of the legislation and (2) a statement of legal opinion that the proposed legislation will meet the requirements of the Act and this part in a manner consistent with the State's constitution and laws. On the basis of the State's submission the Assistant Secretary will approve the plan if he finds that there is a reasonable expectation that the State plan will meet the criteria in § 1902.3 within the indicated 3-year period. In such case, the Assistant Secretary shall not make a determination under section 18(e) of the Act that a State is fully applying the criteria in § 1902.3 until the State has completed all the developmental steps specified in its plan which are designed to make it at least as effective as the Federal program, and the Assistant Secretary has had at least 1 year to evaluate the plan on the basis of actual operations. If at the end of 3 years from the date of commencement of the plan's development, the State is found by the Assistant Secretary, after affording the State notice and opportunity for a hearing, not to have substantially completed the developmental steps of the plan, the Assistant Secretary shall withdraw the approval of the plan.

(c) Scope of State plan.

(1) A State plan may cover any occupational safety and health issue with respect to which a Federal standard has been promulgated under section 6 of the Act. An "issue" is considered to be an industrial, occupational or hazard grouping which is at least as comprehensive as a corresponding grouping contained in

(i) One or more sections in Subparts B or R of Part 1910 of this chapter, or

(ii) One or more of the remaining subparts of Part 1910. However, for cause shown the Assistant Secretary may approve a plan relating to other industrial, occupational or hazard groupings if he determines that the plan is administratively practicable and that such groupings would not conflict with the purposes of the Act.

(2) Each State plan shall describe the occupational safety and health issue or issues and the State standard or standards applicable to each such issue or issues over which it desires to assume enforcement responsibility in terms of the corresponding Federal industrial, occupational or hazard groupings and set forth the reasons, supported with appropriate data, for any variations the State proposes from the coverage of Federal standards.

(3) The State plan shall apply to all employers and employees within the affected industry, occupational or hazard grouping unless the Assistant Secretary finds that the State has shown good cause why any group or groups of employers or employees should be excluded. Any employers or employees so excluded shall be covered by applicable Federal standards and enforcement provisions in the Act.

SUBPART B—CRITERIA FOR STATE PLANS

1902.3—SPECIFIC CRITERIA

(a) General.

A State plan must meet the specific criteria set forth in this section.

(b) Designation of State agency.

(1) The State plan shall designate a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State.

(2) The plan shall also describe the authority and responsibilities vested in such agency or agencies. The plan shall contain assurances that any other responsibilities of the designated agency shall not detract significantly from the resources and priorities assigned to administration of the plan.

(3) A State agency or agencies must be designated with overall responsibility for administering the plan throughout the State. How-

ever, political subdivisions of the State may have the responsibility and authority for the development and enforcement of standards, provided that the State agency or agencies are given adequate authority by statute, regulation, or agreement, to insure that the commitments of the State under the plan will be fulfilled.

(c) Standards.

(1) The State plan shall include or provide for the development or adoption of, and contain assurances that the State will continue to develop or adopt, standards which are or will be at least as effective as those promulgated under section 6 of the Act. Indices of the effectiveness of standards and procedures for the development or adoption of standards against which the Assistant Secretary will measure the State plan in determining whether it is approvable are set forth in § 1902.4(b).

(2) The State plan shall not include standards for products distributed or used in interstate commerce which are different from Federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision, reflecting section 18(c)(2) of the Act, is interpreted as not being applicable to customized products or parts not normally available on the open market, or to the optional parts or additions to products which are ordinarily available with such optional parts or additions.

(d) Enforcement.

(1) The State plan shall provide a program for the enforcement of the State standards which is, or will be, at least as effective as that provided in the Act, and provide assurances that the State's enforcement program will continue to be at least as effective as the Federal program. Indices of the effectiveness of a State's enforcement plan against which the Assistant Secretary will measure the State plan in determining whether it is approvable are set forth in § 1902.4(c).

(2) The State plan shall require employers to comply with all applicable State occupational safety and health standards covered by the plan and all applicable rules issued thereunder, and employees to comply with all standards, rules, and orders applicable to their conduct.

(e) Right of entry and inspection.

The State plan shall contain adequate assurance that inspectors will have a right to enter and inspect covered workplaces which is, or will be, at least as effective as that provided in section 8 of the Act. Where such entry or inspection is refused, the State agency or agencies shall have the authority, through appropriate legal process, to compel such entry and inspection.

(f) Prohibition against advance notice.

The State plan shall contain a prohibition against advance notice of inspections. Any exceptions must be expressly authorized by the head of the designated agency or agencies or his representative and such exceptions may be no broader than those authorized under the Act and the rules published in Part 1903 of this chapter relating to advance notice.

(g) Legal authority.

The State plan shall contain satisfactory assurances that the designated agency or agencies have, or will have, the legal authority necessary for the enforcement of its standards.

(h) Personnel.

The State plan shall provide assurance that the designated agency or agencies have, or will have, a sufficient number of adequately trained and qualified personnel necessary for the enforcement of the standards. For this purpose qualified personnel means persons employed on a merit basis, including all persons engaged in the development of standards and the administration of the State plan. Conformity with the Standards for a Merit System of Personnel Administration, 45 CFR Part 70, issued by the Secretary of Labor, including any amendments thereto, and any standards prescribed by the U. S. Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 (Public Law 91–648; 84 Stat. 1915) modifying or superseding such standards, will be deemed to meet this requirement.

(i) Resources.

The State plan shall contain satisfactory assurances through the use of budget, organizational description, and any other appropriate means that the State will devote adequate funds to the administration and enforcement of the program. The Assistant Secretary will make periodic evaluations of the adequacy of the State resources devoted to the plan.

(j) State and local government employees.

The State plan shall include, to the extent permitted by State law, an effective and comprehensive occupational safety and health program covering all employees of public agencies of the State and its political subdivisions. Such program shall be as effective as the programs contained in the plan which are applicable to employees covered by the plan.

(k) Employer records and reports.

The State plan shall provide assurances that employers covered by the plan will maintain records and make reports to the Assistant Secretary in the same manner and to the same extent as if the plan were not in effect.

(l) State agency reports to the Assistant Secretary.

The State plan shall provide assurances that the designated agency or agencies shall make such reasonable reports to the Assistant Secretary in such form and containing such information as he may from time to time require. The agency or agencies shall establish specific goals, consistent with the goals of the Act, including measures of performance, output and results which will determine the efficiency and effectiveness of the State program, and shall make periodic reports to the Assistant Secretary on the extent to which the State, in implementation of its plan, has attained these goals. Reports will also include data and information in the implementation of the specific inspection and voluntary compliance activities included within the State plan. Further, these reports shall contain such statistical information pertaining to work-related deaths, injuries, and illnesses in employments and places of employment covered by the plan as the Assistant Secretary may from time to time require.

1902.4—INDICES OF EFFECTIVENESS

(a) General.

In order to satisfy the requirements of effectiveness under §§ 1902.3 (c) (1) and (d) (1), the State plan shall:

(1) Establish the same standards, procedures, criteria and rules as have been established by the Assistant Secretary under the Act, or;

(2) Establish alternative standards, procedures, criteria, and rules which will be measured against each of the indices of effectiveness in paragraphs (b) and (c) of this section to determine whether the alternatives are at least as effective as the Federal program with respect to the subject of each index. For each index the State must demonstrate by the presentation of factual or other appropriate information that its plan is or will be at least as effective as the Federal program.

(b) Standards.

(1) The indices for measurement of a State plan with regard to standards follow in subparagraph (2) of this paragraph. The Assistant Secretary will determine whether the State plan satisfies the requirements of effectiveness with regard to each index as provided in paragraph (a) of this section.

(2) The Assistant Secretary will determine whether the State plan:

(i) Provides for State standards with respect to specific issues which are or will be at least as effective as the standards promulgated under section 6 of the Act relating to the same issues. In the case of any State standards dealing with toxic materials or harmful physical agents, they should adequately assure, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life, by such means as, in the development and promulgation of standards, obtaining the best available evidence through research, demonstrations, experiments, and experience under this and other safety and health laws.

(ii) Provides an adequate method to assure that its standards will continue to be at least as effective as Federal standards, including Federal standards relating to issues covered by the plan, which become effective subsequent to any approval of the plan.

(iii) Provides a procedure for the development and promulgation of standards which allows for the consideration of pertinent factual information and affords interested persons, including employees, employers and the public, an opportunity to participate in such processes, by such means as establishing procedures for consideration of expert technical knowledge, and providing interested persons, including employers, employees, recognized standards-producing organizations, and the public an opportunity to submit information requesting the development or promulgation of new standards or the modification or revocation of existing standards and to participate in any hearings. This index may also be satisfied by such means as the adoption of Federal standards, in which case the procedures at the Federal level before adoption of a standard under section 6 may be considered to meet the conditions of this index.

(iv) Provides authority for the granting of variances from State standards, upon application of an employer or employers which correspond to variances authorized under the Act, and for consideration of the views of interested parties, by such means as giving affected employees notice of each application and an opportunity to request and participate in hearings or other appropriate proceedings relating to applications for variances.

(v) Provides for prompt and effective standards setting actions for the protection of employees against new and unforeseen hazards, by such means as the authority to promulgate emergency temporary standards.

(vi) Provides that State standards contain appropriate provision for the furnishing to employees of information regarding hazards in the workplace, including information about suitable precautions, relevant symptoms, and emergency treatment in case of exposure, by such means as labeling, posting, and, where appropriate, medical examination at no cost to employees, with the results of such examinations being furnished only to appropriate State officials and, if the employee so requests, to his physician.

(vii) Provides that State standards, where appropriate, contain specific provision for the protection of employees from exposure to hazards, by such means as containing appropriate provision for use of suitable protective equipment and for control or technological procedures with respect to such hazards, including monitoring or measuring such exposure.

(c) Enforcement.

(1) The indices for measurement of a State plan with regard to enforcement follow in subparagraph (2) of this paragraph. The Assistant Secretary will determine whether the State plan satisfies the requirements of effectiveness with regard to each index as provided in paragraph (a) of this section.

(2) The Assistant Secretary will determine whether the State plan:

(i) Provides for inspection of covered workplaces in the State, including inspections in response to complaints, where there are reasonable grounds to believe a hazard exists, in order to assure, so far as possible, safe and healthful working conditions for covered employees, by such means as providing for inspections under conditions such as those provided in section 8 of the Act.

(ii) Provides an opportunity for employees and their representatives, before, during, and after inspections, to bring possible violations to the attention of the State agency with enforcement responsibility in order to aid inspections, by such means as affording a representative of the employer and a representative authorized by employees an opportunity to accompany the State representative during the physical inspection of the workplace, or where there is no authorized representative, by providing for consultation by the State representative with a reasonable number of employees.

(iii) Provides for the notification of employees, or their representatives, when the State decides not to take compliance action as a result of violations alleged by such employees or their representatives and further provides for informal review of such decisions, by such means as written notification of decisions not to take compliance action and the reasons therefor, and procedures for informal review of such decisions and written statements of the disposition of such review.

(iv) Provides that employees be informed of their protections and obligations under the Act, including the provisions of applicable standards, by such means as the posting of notices or other appropriate sources of information.

(v) Provides necessary and appropriate protection to an employee against discharge or discrimination in terms and conditions of employment because he has filed a complaint, testified, or otherwise acted to exercise rights under the Act for himself or others, by such means as providing for appropriate sanctions against the employer for such actions and by providing for the withholding, upon request, of the names of complainants from the employer.

(vi) Provides that employees have access to information on their exposure to toxic materials or harmful physical agents and receive prompt information when they have been or are being exposed to such materials or agents in concentrations or at levels in excess of those prescribed by the applicable safety and health standards, by such means as the observation by employees of the monitoring or measuring of such materials or agents, employee access to the records of such monitoring or measuring, prompt notification by an employer to any employee who has been or is being exposed to such agents or materials in excess of the applicable standards, and information to such employee of corrective action being taken.

(vii) Provides procedures for the prompt restraint or elimination of any conditions or practices in covered places of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided for in the plan, by such means as immediately informing employees and employers of such hazards, taking steps to obtain immediate abatement of the hazard by the employer, and where appropriate, authority to initiate necessary legal proceedings to require such abatement.

(viii) Provides adequate safeguards to protect trade secrets, by such means as limiting access to such trade secrets to authorized State officers or employees concerned with carrying out the plan and by providing for the issuance of appropriate orders to protect the confidentiality of trade secrets.

(ix) Provides that the State agency (or agencies) will have the necessary legal authority for the enforcement of standards, by such means as provisions for appropriate compulsory process to obtain necessary evidence or testimony in connection with inspection and enforcement proceedings.

(x) Provides for prompt notice to employers and employees when an alleged violation of standards has occurred, including the proposed abatement requirements, by such means as the issuance of a written citation to the employer and posting of the citation at or near the site of the violation; further provides for advising the employer of any proposed sanctions, by such means as a notice to the employer by certified mail within a reasonable time of any proposed sanctions.

(xi) Provides effective sanctions against employers who violate State standards and orders, such as those prescribed in the Act.

(xii) Provides for an employer to have the right of review of violations alleged by the State, abatement periods, and proposed penalties and for employees or their representatives to have an opportunity to participate in review proceedings, by such means as providing for administrative or judicial review, with an opportunity for a full hearing on the issues.

(xiii) Provides that the State will undertake programs to encourage voluntary compliance by employers and employees by such means as conducting training and consultation with employers and employees.

(d) Additional indices.

Upon his own motion or after consideration of data, views and arguments received in any proceeding held under Subpart C of this part, the Assistant Secretary may prescribe additional indices for any State plan which shall be in furtherance of the purpose of this part, as expressed in § 1902.1.

1902.5—INTERGOVERNMENTAL COOPERATION ACT OF 1968

This part shall be construed in a manner with the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201–4233), and any regulations pursuant thereto.

1902.6—CONSULTATION WITH THE NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

The Assistant Secretary will consult, as appropriate, with the Director of the National Institute for Occupational Safety and Health with regard to plans submitted by the States under this part.

SUBPART C—PROCEDURES FOR SUBMISSION, APPROVAL AND REJECTION OF STATE PLANS

1902.10—SUBMISSION

(a) An authorized representative of the State agency or agencies responsible for administering the plan shall submit the plan with 10 copies to the appropriate Regional Administrator of the Occupational Safety and Health Administration, U. S. Department of Labor. The State plan shall include (1) supporting papers conforming to the requirements specified in Subpart B of this part, and (2) the State occupational safety and health standards to be included in the plan, including copies of any specific or enabling State laws and regulations relating to such standards. If any of the representations concerning the requirements of Subpart B of this part are dependent upon any judicial or administrative interpretations of the State standards or enforcement provisions, the State shall furnish citations to any pertinent judicial decisions and the text of any pertinent administrative decisions.

(b) Upon receipt of the State plan the Regional Administrator shall make a preliminary examination of the plan. If his examination reveals any defect in the plan, the Regional Administrator shall offer assistance to the State agency and shall provide the agency an opportunity to cure such defect. After his preliminary examination, and after affording the State agency such opportunity to cure defects, the Regional Administrator shall submit the plan to the Assistant Secretary.

(c) Upon receipt of the plan from the Regional Administrator, the Assistant Secretary shall examine the plan and supporting materials. If the examination discloses no cause for rejecting the plan, the Assistant Secretary shall follow the procedure prescribed in § 1902.11. If the examination discloses cause for rejection of the plan, the Assistant Secretary shall follow the procedure prescribed in § 1902.17.

PROCEDURE FOR PROPOSED OR POSSIBLE APPROVAL OF PLAN

1902.11—GENERAL NOTICE

(a) Upon receipt of a State plan submitted by a Regional Administrator under § 1902.10 whenever the Assistant Secretary proposes to approve the plan, or to give notice that such approval is an issue before him, he shall publish in the FEDERAL REGISTER a notice meeting the requirements of the remaining paragraphs of this section. No later than 5 days following the publication of the notice in the FEDERAL REGISTER, the applying State agency shall publish, or cause to be published, within the State reasonable notice containing the same information.

(b) The notice shall indicate the submission of the plan and its contents, and any proposals, subjects, or issues involved.

(c) The notice shall provide that the plan, or copies thereof, shall be available for inspection and copying at the office of the Director, Office of State Programs, Occupational Safety and Health Administration, 1726 M Street NW., Washington, DC 20210, office of the Regional Administrator in whose region the State is located, and an office of the State which shall be designated by the State for this purpose.

(d) The notice shall afford interested persons an opportunity to submit in writing, data, views, and arguments on the proposal, subjects, or issues involved within 30 days after publication of the notice in the FEDERAL REGISTER. Thereafter the written comments received or copies thereof shall be available for public inspection and copying at the office of the Director, Office of State Programs, Occupational Safety and Health Administration, 1726 M Street NW., Washington, DC 20210, office of the Regional Administrator in whose region the State is located, and an office of the State which shall be designated by the State for this purpose.

(e) Upon his own initiative, the Assistant Secretary may give notice of an informal or formal hearing affording an opportunity for oral comments concerning the plan.

(f) In the event no notice of hearing is provided under paragraph (e) of this section it shall be provided that any interested person may request an informal hearing concerning the proposed plan, or any part thereof, whenever particularized written objections thereto are filed within 30 days following publication of the notice in the FEDERAL REGISTER. If the Assistant Secretary finds that substantial objections have been filed, he shall afford a formal or informal hearing on the subjects and issues involved under § 1902.13 or § 1902.14, or shall commence a proceeding under § 1902.17.

1902.12—OPPORTUNITY FOR MODIFICATIONS AND CLARIFICATIONS

The Assistant Secretary may afford the State an opportunity to modify or clarify its plan on the basis of any comments received under § 1902.11 or § 1902.13, before commencing a proceeding to reject the plan. In this connection, the State may informally discuss any issues raised by such comments with the staff of the Office of Federal and State Operations. The Assistant Secretary may afford an additional opportunity for public comment, particularly when such an opportunity would not unduly delay final action on the plan and when the comments could be expected to elicit new relevant matter.

The amendment shall be effective immediately.

(Secs. 8(g) and 18, Public Law 91-596, 84 Stat. 1600, 1608, 29 U.S.C. 657, 667.)
[38 F.R. 12605, May 14, 1973]

1902.13—INFORMAL HEARING

Any informal hearing shall be legislative in type. The procedures for informal hearings may take a variety of forms. The appropriateness of any particular form will turn largely upon the proposals, subjects, or issues involved. The rules of procedure for each hearing shall be published with the notice thereof.

1902.14—FORMAL HEARING

Any formal hearing provided for under § 1902.11 (e) and (f) shall be commenced upon the publication of reasonable notice in the FEDERAL REGISTER and similar notice by the State. The hearing shall conform with the requirements of 5 U.S.C. 556 and 557. The terms for filing proposed findings and conclusions and exceptions to any tentative decision, or objections to a tentative decision, shall be set forth in the notice.

1902.15—CERTIFICATION OF THE RECORD OF A HEARING

Upon completion of any formal or informal hearing, the transcript thereof, together with written submissions, exhibits filed during the hearing, and any post-hearing presentations shall be certified by the officer presiding at the hearing to the Assistant Secretary.

PROCEDURE FOR PROPOSED OR POSSIBLE REJECTION OF PLAN

1902.17—THE PROCEEDING

Whenever as a result of (a) and initial examination of a plan, or (b) written or oral comments concerning a plan submitted in an informal rulemaking proceeding concerning a proposed approval of a plan or any subject or issue concerning the plan, the Assistant Secretary proposes to reject a plan or rejection remains in issue for any reason, he shall follow the procedures prescribed in the remaining sections of this subpart.

1902.18—PREVIOUS HEARING OR OTHER OPPORTUNITY FOR COMMENT ON PLAN

(a) Whenever an informal hearing has been held under §§ 1902.11 and 1902.13, any evidence submitted in such a hearing shall be considered and may be relied upon whenever it is found that no party will be prejudiced thereby because (1) of a lack of an opportunity for cross-examination afforded in the informal hearing on the issues involved, or (2) the veracity and demeanor of witnesses are not important with respect to the type of evidence involved (e.g., extensive technical or statistical data), or (3) for any other reason.

(b) Any written comments received in response to a notice issued under § 1902.11 shall be a part of the record of the proceeding.

(c) Whenever a formal hearing has been held under § 1902.14 the Assistant Secretary shall hold no additional hearing, and shall proceed to issue a tentative decision under § 1902.21.

1902.19—NOTICE OF HEARING

(a) Whenever the Assistant Secretary has issued no previous notice concerning the plan, or only informal rule making proceedings have been conducted concerning the plan, the Assistant Secretary shall publish in the FEDERAL REGISTER an appropriate notice concerning the plan and provide an opportunity for formal hearing and decision on the possible rejection of the plan and on any subsidiary issues. The notice also shall set forth such rules as may be necessary so as to assure compliance with 5 U.S.C. 556 and 557 in the conduct of the proceeding. The time for filing proposed findings and conclusions and exceptions to any tentative decision shall be set forth in the notice.

(b) Not later than 5 days following the publication of the notice in the FEDERAL REGISTER, required by paragraph (a) of this section, the applying State agency shall publish, or cause to be published, within the State reasonable notice containing the same information.

DECISIONS

1902.20—DECISION FOLLOWING INFORMAL PROCEEDING

(a) This section deals with a situation where the Assistant Secretary has (1) afforded interested persons an opportunity to submit written data, views, or arguments concerning a proposal, subject, or issue concerning a plan; or (2) has in addition provided an informal hearing concerning a proposal, subject, or issue concerning a plan.

(b)

(1)

(i) After consideration of all relevant information which has been presented, if the Assistant Secretary approves a plan he shall issue a decision to that effect.

(ii) In the event the plan is approved under § 1902.2(b), the decision shall state that the plan does not fully meet the criteria set forth in § 1902.3, and shall summarize the schedule and any other measures for bringing the plan up to the level of such criteria.

(iii) The decision shall also reflect the Assistant Secretary's intention as to continued Federal enforcement of Federal standards in areas covered by the plan. Provisions for continued Federal enforcement shall take into consideration: (*a*) Whether the plan is approved under § 1902.2(a) or § 1902.2(b); (*b*) the schedule for coming up to Federal standards in any § 1902.2(b) plan; and (*c*) any other relevant matters.

(2) After consideration of all relevant information contained in any written or oral comments received in any informal proceeding, if the Assistant Secretary proposes to disapprove a plan, or the disposition of a subject or issue permits the possible disapproval of a plan, he shall publish a notice to that effect, and commence a proceeding meeting the requirements of § 1902.19.

1902.21—TENTATIVE DECISION FOLLOWING FORMAL PROCEEDING

(a) On the basis of the whole record of any hearing held under § 1902.14 or § 1902.19, the Assistant Secretary shall issue a tentative decision either approving or disapproving the plan. The tentative decision shall include a statement of the findings and conclusions and reasons or bases therefor on all material issues of fact, law, or discretion which have been presented. The tentative decision shall be published in the FEDERAL REGISTER.

(b) The State agency and other interested persons participating in the hearing may waive the tentative decision. In such event the Assistant Secretary shall issue a final decision under § 1902.22.

1902.22—FINAL DECISION FOLLOWING FORMAL PROCEEDING

(a) Except when interested persons participating in the hearing have waived the tentative decision under § 1902.21(b) interested persons participating in the hearing shall have an opportunity to file exceptions to a tentative decision and objections to such exceptions within periods of time to be specified in the tentative decision. An original and four copies of any exception or objections shall be filed.

(b)

(1) Thereafter the Assistant Secretary shall issue a final decision ruling upon each exception and objection filed. The final decision shall be published in the FEDERAL REGISTER.

(2) Any final decisions approving a plan shall contain the provisions prescribed in § 1902.20(b)(1)(iii) concerning Federal enforcement in areas covered by the plan.

1902.23—PUBLICATION OF DECISIONS

All decisions approving or disapproving a plan shall be published in the FEDERAL REGISTER.

General

1902.30—PURPOSE AND SCOPE

This subpart contains procedures and criteria under which the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) under a delegation of authority from the Secretary of Labor (Secretary's Order 12-71, 36 FR 8754) will make his determination on whether to grant final approval to State plans in accordance with the provisions of section 18(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act).

1902.31—DEFINITIONS

As used in this subpart, unless the context clearly indicates otherwise:

"Act" means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

"Affirmative 18(e) determination" means an affirmative determination under section 18(e) of the Act that the State plan or any modification thereof, is in actual operation meeting the criteria and indices of section 18(c) of the Act and Subpart B of this part so as to warrant the withdrawal of the application and discretionary Federal enforcement and standards authority from issues covered by the plan, or by any modification thereof.

"Assistant Regional Director" means the Assistant Regional Director for Occupational Safety and Health for the region in which a State is located.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

"Commencement of a case" under section 18(e) of the Act means, for the purpose of retaining Federal jurisdiction despite an affirmative 18(e) determination, the issuance of a citation, and in the case of an imminent danger, the initiation of enforcement proceedings under section 13 of the Act.

"Commencement of plan operations" means the beginning of operations under a plan following the approval of the plan by the Assistant Secretary and in no case may be later than the effective date of the initial funding grant provided under section 23(g) of the Act. .

"Development step" includes, but is not limited to, those items listed in the published developmental schedule, or any revisions thereof, for each plan contained in 29 CFR Part 1952. A developmental step also includes those items specified in the plan as approved under section 18(c) of the Act for completion by the State, as well as those items which under the approval decision were subject to evaluations. (See e.g., approval of Colorado and Michigan plans, 38 FR 25172, 38 FR 27388, respectively), and changes deemed necessary as a result thereof to make the State program at least as effective as the Federal program within the 3 years developmental period. (See 29 CFR 1953.10(a)).

"Initial approval" means approval of a State plan or any modification thereof, under section 18(c) of the Act and Subpart C of this part.

"Person" means an individual, partnership, association, corporation, business trust, legal representative, organized group of individuals, or an agency, authority or instrumentality of the United States or of a State.

"Separable portion of a plan" for purposes of an 18(e) determination generally means more than one industrial, occupational or hazard grouping as defined in § 1902.2(c) (1) which is administratively practicable and reasonably separable from the remainder of the plan. (See 29 CFR 1952.6(a)).

1902.32—GENERAL POLICIES

(a) Sections 18 (e) and (f) of the Act provide for the continuing evaluation and monitoring of State plans approved under section 18 (c) of the Act. The Assistant Secretary's decision whether to grant an affirmative 18 (e) determination will be based, in part, on the results of these evaluations. Section 18(e) provides that a period of not less than 3 years shall have passed before the Assistant Secretary may make a determination that the State program in actual operations is applying the criteria of section 18(c) of the Act. In the case of a developmental plan, § 1902.2(b) of this part requires that the Assistant Secretary must have at least one year in which to evaluate the plan's actual operations following the completion of all developmental steps specified in the plan. Thus, to be considered for an 18(e) determination, at least three years shall have passed following commencement of operations after the initial approval of a State's occupational safety and health plan by the Assistant Secretary. In the case of a developmental plan, at least one year shall have passed following the completion of all developmental steps, but, in any event at least three years must have passed following initial approval of the plan before discretionary Federal enforcement authority and standards may be withdrawn from issues covered by an approved plan.

(b) In making an 18(e) determination, the Assistant Secretary will determine if actual operations under a State's plan, or under a separable portion of the plan, indicate that the State is applying the criteria of section 18(c) of the Act and the indices of effectiveness of Subpart B of this part in a manner which renders operations under the plan "at least as effective as" operations under the Federal program in providing safe and healthful employment and places of employment within the State. In making this determination, the Assistant Secretary may consider such information which he deems appropriate for an informed decision.

(c) If the Assistant Secretary makes an affirmative 18(e) determination, the Federal enforcement provisions of sections 5(a) (2), 8 (except for the purposes of continuing evaluations under section 18(f) of the Act), 9, 10, 13 and 17 and standards promulgated under section 6 of the Act shall not apply with respect to those occupational safety and health issues covered under the plan which have been given an affirmative 18(e) determination. However, the Assistant Secretary may retain jurisdiction over proceedings commenced under sections 9, 10 and 13 of the Act before the date of his determination. In addition, the Assistant Secretary shall retain his jurisdiction under the anti-discrimination provisions of section 11(c) of the Act.

(d) If the Assistant Secretary determines that a State plan, or any portion thereof, has not met the criteria of an 18(e) determination, he shall retain his authority under the enforcement provisions of sections 5(a) (2), 8, 9, 10, 13 and 17 and his standards authority under section 6 of the Act in the issues found ineligible for an 18(e) determination. In addition, his decision may result in the commencement of proceedings for withdrawal of approval of the plan, or any separable portion thereof, under 29 CFR Part 1955.

(e) Once a State's plan, or any modification thereof, has been given an affirmative 18(e) determination, the State is required to maintain a program which will meet the requirements of section 18(c) and will continue to be "at least as effective as" the Federal program operations in the issues covered by the determination. As the Federal program changes and thereby becomes more effective, the State is correspondingly required to adjust its program at a level which would provide a program for workplace safety and health which would be "at least as effective as" the improvements in the Federal program. A failure to comply with this requirement may result in the revocation of the affirmation 18(e) determination and the resumption of Federal enforcement and standards authority and/or in the commencement of proceedings for the withdrawal of approval of the plan, or any portion thereof, pursuant to 29 CFR Part 1955.

(f) The Assistant Secretary may reconsider and, if necessary, rescind or revoke all or a separable portion of an affirmative 18(e) determination and reinstate concurrent Federal enforcement authority if he finds that a State does not maintain its commitment to provide a program for employee safety and health protection meeting the requirements of section 18(c) of the Act. This authority is designed to be used in instances where operations under a State program are found to be less effective than under the Federal program because of unusual circumstances which are temporary in nature. The Assistant Secretary may also use this procedure to reinstate Federal enforcement authority in conjunction with plan withdrawal proceedings in order to ensure that there is no serious gap in his commitment to assure safe and healthful working conditions so far as possible for every employee.

COMPLETION OF DEVELOPMENTAL STEPS—CERTIFICATION

1902.33—DEVELOPMENTAL PERIOD

Upon the commencement of plan operations after the initial approval of a State's plan by the Assistant Secretary, a State has three years in which to complete all of the developmental steps specified in the plans as approved. Section 1953.11 of this chapter sets forth the procedures for the submission and consideration of developmental changes by the Assistant Secretary. Generally, whenever a State completes a developmental step, it must submit the resulting change as a supplement to its plan together with relevant documentation to the Assistant Secretary for his approval. The Assistant Secretary's approval of such changes is then published in the Federal Register and the pertinent subparts of Part 1952 of this chapter are amended to reflect the completion of a developmental step.

1902.34—CERTIFICATION OF COMPLETION OF DEVELOPMENTAL STEPS

(a) Upon the completion of all of the developmental steps in a State's plan, which is to be accomplished not later than three years following commencement of plan operations after approval of the plan by the Assistant Secretary under section 18(c), the Assistant Regional Director shall certify, as provided in paragraph (b) of this section, that all developmental steps in the plan have been met and that the State's program is to be evaluated on the basis of its eligibility for an 18(e) determination after at least one year of evaluations of the plan.

(b) Upon determining that a State has completed all of its developmental steps, the Assistant Regional Director shall prepare a certification which he shall promptly forward to the Assistant Secretary. The certification shall include, but shall not be limited to, the following;

(1) A list of all developmental steps or revisions thereof, plan amendments or changes which result in the completion of steps or revisions thereof, and the dates the Assistant Secretary's or the Assistant Regional Director's approval of each change was published in the FEDERAL REGISTER;

(2) Substantive changes, if any, in the State program which were approved by the Assistant Secretary and their dates of publication in the FEDERAL REGISTER;

(3) Documentation that the legal basis for the applicable State merit system has been approved by the U.S. Civil Service Commission and that the actual operations of the State merit system has been found acceptable by the Occupational Safety and Health Administration with the advice of the U.S. Civil Service Commission; and

(4) A description of the issues which are covered by the State plan. Where applicable, the certification shall include a description of those separable portions of the plan which have been certified for 18(e) evaluation purposes as well as those portions of the plan which were not certified by the Assistant Regional Director.

must have passed following initial approval of the plan before discretionary Federal enforcement authority and standards may be withdrawn from issues covered by an approved plan.

(b) In making an 18(e) determination, the Assistant Secretary will determine if actual operations under a State's plan, or under a separable portion of the plan, indicate that the State is applying the criteria of section 18(c) of the Act and the indices of effectiveness of Subpart B of this part in a manner which renders operations under the plan "at least as effective as" operations under the Federal program in providing safe and healthful employment and places of employment within the State. In making this determination, the Assistant Secretary may consider such information which he deems appropriate for an informed decision.

(c) If the Assistant Secretary makes an affirmative 18(e) determination, the Federal enforcement provisions of sections 5(a) (2), 8 (except for the purposes of continuing evaluations under section 18(f) of the Act), 9, 10, 13 and 17 and standards promulgated under section 6 of the Act shall not apply with respect to those occupational safety and health issues covered under the plan which have been given an affirmative 18(e) determination. However, the Assistant Secretary may retain jurisdiction over proceedings commenced under sections 9, 10 and 13 of the Act before the date of his determination. In addition, the Assistant Secretary shall retain his jurisdiction under the anti-discrimination provisions of section 11(c) of the Act.

(d) If the Assistant Secretary determines that a State plan, or any portion thereof, has not met the criteria of an 18(e) determination, he shall retain his authority under the enforcement provisions of sections 5(a) (2), 8, 9, 10, 13 and 17 and his standards authority under section 6 of the Act in the issues found ineligible for an 18(e) determination. In addition, his decision may result in the commencement of proceedings for withdrawal of approval of the plan, or any separable portion thereof, under 29 CFR Part 1955.

(e) Once a State's plan, or any modification thereof, has been given an affirmative 18(e) determination, the State is required to maintain a program which will meet the requirements of section 18(c) and will continue to be "at least as effective as" the Federal program operations in the issues covered by the determination. As the Federal program changes and thereby becomes more effective, the State is correspondingly required to adjust its program at a level which would provide a program for workplace safety and health which would be "at least as effective as" the improvements in the Federal program. A failure to comply with this requirement may result in the revocation of the affirmation 18(e) determination and the resumption of Federal enforcement and standards authority and/or in the commencement of proceedings for the withdrawal of approval of the plan, or any portion thereof, pursuant to 29 CFR Part 1955.

(f) The Assistant Secretary may reconsider and, if necessary, rescind or revoke all or a separable portion of an affirmative 18(e) determination and reinstate concurrent Federal enforcement authority if he finds that a State does not maintain its commitment to provide a program for employee safety and health protection meeting the requirements of section 18(c) of the Act. This authority is designed to be used in instances where operations under a State program are found to be less effective than under the Federal program because of unusual circumstances which are temporary in nature. The Assistant Secretary may also use this procedure to reinstate Federal enforcement authority in conjunction with plan withdrawal proceedings in order to ensure that there is no serious gap in his commitment to assure safe and healthful working conditions so far as possible for every employee.

COMPLETION OF DEVELOPMENTAL STEPS—CERTIFICATION

1902.33—DEVELOPMENTAL PERIOD

Upon the commencement of plan operations after the initial approval of a State's plan by the Assistant Secretary, a State has three years in which to complete all of the developmental steps specified in the plans as approved. Section 1953.11 of this chapter sets forth the procedures for the submission and consideration of developmental changes by the Assistant Secretary. Generally, whenever a State completes a developmental step, it must submit the resulting change as a supplement to its plan together with relevant documentation to the Assistant Secretary for his approval. The Assistant Secretary's approval of such changes is then published in the Federal Register and the pertinent subparts of Part 1952 of this chapter are amended to reflect the completion of a developmental step.

1902.34—CERTIFICATION OF COMPLETION OF DEVELOPMENTAL STEPS

(a) Upon the completion of all of the developmental steps in a State's plan, which is to be accomplished not later than three years following commencement of plan operations after approval of the plan by the Assistant Secretary under section 18(c), the Assistant Regional Director shall certify, as provided in paragraph (b) of this section, that all developmental steps in the plan have been met and that the State's program is to be evaluated on the basis of its eligibility for an 18(e) determination after at least one year of evaluations of the plan.

(b) Upon determining that a State has completed all of its developmental steps, the Assistant Regional Director shall prepare a certification which he shall promptly forward to the Assistant Secretary. The certification shall include, but shall not be limited to, the following;

(1) A list of all developmental steps or revisions thereof, plan amendments or changes which result in the completion of steps or revisions thereof, and the dates the Assistant Secretary's or the Assistant Regional Director's approval of each change was published in the FEDERAL REGISTER;

(2) Substantive changes, if any, in the State program which were approved by the Assistant Secretary and their dates of publication in the FEDERAL REGISTER;

(3) Documentation that the legal basis for the applicable State merit system has been approved by the U.S. Civil Service Commission and that the actual operations of the State merit system has been found acceptable by the Occupational Safety and Health Administration with the advice of the U.S. Civil Service Commission; and

(4) A description of the issues which are covered by the State plan. Where applicable, the certification shall include a description of those separable portions of the plan which have been certified for 18(e) evaluation purposes as well as those portions of the plan which were not certified by the Assistant Regional Director.

(c) After a review of the certification and the State's plan, if the Assistant Secretary finds that the State has completed all the developmental steps specified in the plan, he shall publish the certification in the FEDERAL REGISTER and amend the appropriate subpart of Part 1952 of this chapter to reflect this finding.

1902.35—EFFECT OF CERTIFICATION

Publication of the certification acknowledging the completion of all of the developmental steps in a State's plan will automatically initiate the evaluation of a State's plan for the purposes of an 18 (e) determination. Evaluation for the purposes of an 18(e) determination will continue for at least one year after the publication of the certification in the FEDERAL REGISTER. Federal enforcement authority under sections 5(a) (2), 8, 9, 10, 11(c), 13, and 17 of the Act and Federal Standards authority under section 6 of the Act will not be relinquished during the evaluation period. Evaluation conducted for 18(e) determination purposes will be based on the criteria set forth in §§ 1902.37 and 1902.38.

BASIS FOR 18(e) DETERMINATIONS

1902.36—GENERAL PROVISIONS

(a) In making this evaluation of the actual operations of a State's plan for the purposes of an 18(e) determination, the Assistant Secretary shall consider all relevant data which will aid him in making an effective determination. In his evaluation he shall consider whether the requirements of section 18(c) of the Act and the criteria for State plans outlined in Subpart B of this part as well as those in § 1902.37 are being applied in actual operations for a reasonable period of time in a manner which warrants the termination of concurrent federal enforcement authority and standards in issues covered under the plan.

(b) The Assistant Secretary's evaluation for an 18(e) determination will be addressed to consideration of whether the criteria and indices in §1902.37(a) are being applied by the State in such a manner as to render its program in operation at least as effective as operations under the Federal program. In considering the question of such application, the Assistant Secretary shall also consider the factors provided under § 1902.37(b). The Assistant Secretary's evaluation may include such other information on the application of the criteria and indices in § 1902.37 such as information developed from comments received from the public and the results of any hearings which may have been held under § 1902.40 concerning the proposed 18(e) determination.

1902.37—FACTORS FOR DETERMINATION

(a) The Assistant Secretary shall determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4 of this part.

(b) In determining whether a State has applied the criteria and indices of effectiveness in paragraph (a) of this section in actual operations, the Assistant Secretary will, among other things re lated to the application of the criteria and indices, consider whether:

(1) The State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

(2) The State has adhered to the procedures which it has adopted and which have been approved either under the State plan or in State plan changes or under any other procedures for approval authorized by the Assistant Secretary.

(3) The State has timely adopted all Federal Standards, and amendments thereto, for issues covered under the plan or has timely developed and promulgated standards which are at least as effective as the comparable Federal standards and amendments thereto.

(4) If the State has adopted Federal standards, the State's interpretation and application of such standards have been consistent with the applicable Federal interpretation and application. Where the State has developed and promulgated its own standards, such standards have been interpreted and applied in a manner which is at least as effective as the interpretation and application of comparable Federal standards. This requirement acknowledges that State standards may have been approved by the Assistant Regional Director, but emphasizes the requirement that the standards are to be at least as effective as the comparable Federal standards in actual operations.

(5) If any State standard, whether it is an adopted Federal standard or a standard developed by a State, has been subject to administrative or judicial challenge, the State has taken the necessary administrative, judicial or legislative action to correct any deficiencies in its program resulting from such challenge.

(6) In granting permanent variances from a standard the State has assured that the employer provides conditions of employment which are as safe and healthful as those which would prevail if he complied with the standard

(7) In granting temporary variances from a standard, the State has ensured that the recipient of the variance has come into compliance with the standard as early as possible.

(8) The State inspection program is being implemented in a manner which allows a sufficient allocation of resources to be directed toward target industries and target health hazards as designated by the State while providing adequate attention to all other workplaces covered under the plan, or any modification thereof.

(9) The State exercises the authority through appropriate means, to enforce its right of entry and inspection wherever such right of entry or inspection is refused.

(10) Inspections of workplaces are conducted by State inspectors in a competent manner, following approved enforcement procedures. This includes a requirement that the inspectors obtain citations which may be issued.

(11) The State issues citations, proposed penalties and notices for failure to abate in a timely manner.

(12) The State proposes penalties in a manner at least as effective as under the Federal program, including the proposing of penalties for first instance violations and the consideration of factors comparable to those required to be considered under the Federal program.

(13) The State ensures the abatement of hazards for which a citation has been issued, including the issuance of notices of failure to abate and appropriate penalties.

(14) Wherever appropriate, the State agency has sought administrative and judicial review of adverse adjudications. This factor also addresses whether the necessary administrative, legislative or judicial action to correct any deficiencies in its enforcement program resulting from an adverse administrative or judicial determination.

(15) Insofar as it is available, analysis of the annual occupational safety and health survey by the Bureau of Labor Statistics, as well as of other available Federal and State measurements of program impact on worker safety and health, which analysis also takes into consideration various local factors, indicates that trends in worker safety and health injury and illness rates under the State program compare favorably to those under the Federal program.

PROCEDURES FOR 18(e) DETERMINATION

1902.38—EVALUATION OF PLAN FOLLOWING CERTIFICATION

(a) Following the publication in the FEDERAL REGISTER under § 1902.34 of the certification acknowledging the completion of all developmental steps specified in the plan, or any portion thereof, the Assistant Secretary will evaluate and monitor the actual operations under the State plan for at least 1 year before determining whether the State is eligible for an 18(e) determination. The evaluation will assess the actual operation of the State's fully implemented program in accordance with the criteria in § 1902.37 and take into account any information available to the Assistant Secretary affecting the State's program.

(b) The Assistant Regional Director shall prepare a semi-annual report of his evaluation of the actual operations under the State plan or any portion thereof in narrative form. The Assistant Regional Director's evaluation report will be transmitted to the Assistant Secretary who will then transmit the report to the State. The State shall be afforded an opportunity to respond to each evaluation report.

[42 F.R. 58746, November 11, 1977.]

1902.39—COMPLETION OF EVALUATION

(a) After evaluating the actual operations of the State plan, or any portion thereof, for at least 1 year following publication of the certification in the Federal Register under § 1902.34, the Assistant Secretary shall notify the State whenever he determines that the State will be eligible for an 18(e) determination. In addition, a State may request an 18(e) determination following the evaluation period noted above. In no case shall this determination of eligibility be later than 2 years following the publication of the certification of the completion of developmental steps in the Federal Register under § 1902.34. In the case of a plan which was not developmental, the determination of eligibility shall not be sooner than 3 years following the date of commencement of operations under the plan.

(b) After it has been determined that a State will be eligible for an 18(e) determination, the Assistant Regional Director shall prepare a final report of his evaluation of the actual operations under a State's plan or portion thereof which may be subject to the 18(e) determination. The Assistant Regional Director's report shall be transmitted to the Assistant Secretary. The Assistant Secretary shall transmit such report to the State and the State shall have an opportunity to respond to the report.

(c) Whenever it has been determined that a State's plan, or separable portion thereof is eligible for an 18(e) determination, the Assistant Secretary shall publish a notice in the FEDERAL REGISTER. The notice shall meet the requirements of the remaining paragraphs of this Section. No later than 10 days following the publication of the notice in the FEDERAL REGISTER, the affected State agency shall publish, or cause to be published, within the State, reasonable notice containing the same information.

(d) The notice shall indicate that the plan, or any separable portion thereof, is in issue before the Assistant Secretary for a determination as to whether the criteria in section 18(c) of the Act are being applied in actual operation, and indicate the particular substantive issues, if any, for consideration in making such determination. Where a portion of a plan is in issue for such a determination, the notice shall specify such portions of the plan as well as those portions of the plan which are not in issue for the determination.

(e) The notice shall afford interested persons an opportunity to submit in writing, data, views, and arguments on the proposed 18(e) determination, and the affected State an opportunity to respond to such submissions.

(f) The notice shall also state that any interested person or the affected State may request an informal hearing concerning the proposed 18(e) determination whenever particularized written objections thereto are filed within 35 days following publication of the notice in the FEDERAL REGISTER.

(g) If the Assistant Secretary finds that substantial objections are filed which relate to the proposed 18(e) determination, the Assistant Secretary shall, and in any other case may, publish a notice of informal hearing in the FEDERAL REGISTER not later than 30 days after the last day for filing written views or comments. The notice shall include:

(1) A statement of the time, place and nature of the proceeding;

(2) A specification of the substantial issues which have been raised and on which an informal hearing has been requested;

(3) The requirement for the filing of an intention to appear at the hearing, together with a statement of the position to be taken with regard to the issues specified, and of the evidence to be adduced in support of the position;

(4) The designation of a presiding officer to conduct the hearing; and

(5) Any other appropriate provisions with regard to the proceeding.

(h) Not later than 10 days following the publication of the notice in the FEDERAL REGISTER required by paragraph (g) of this section, th fected agency shall publish, or cause to be lished, within the State reasonable notice taining the same information.

1902.40—INFORMAL HEARING

(a) Any hearing conducted under this section shall be legislative in type. However, fairness may require an opportunity for cross-examination on pertinent issues. The presiding officer is empowered to permit cross-examination under such circumstances. The essential intent is to provide an opportunity for participation and comment by interested persons which can be carried out expeditiously and without rigid procedures which might unduly impede or protract the 18(e) determination process.

(b) Although the hearing shall be informal and legislative in type, this section is intended to provide more than the bare essentials of informal proceedings under 5 U.S.C. 553. The additional requirements are the following:

(1) The presiding officer shall be a hearing examiner appointed under 5 U.S.C. 3105.

(2) The presiding officer shall provide an opportunity for cross-examination on pertinent issues.

(3) The hearing shall be reported verbatim, and a transcript shall be available to any interested person on such terms as the presiding officer may provide.

(c) The officer presiding at a hearing shall have all the power necessary or appropriate to conduct a fair and full hearing, including the powers:

(1) To regulate the course of the proceedings;

(2) To dispose of procedural requests, objections, and comparable matters;

(3) To confine the presentation to the issues specified in the notice of hearing, or, where appropriate, to matters pertinent to the issue before the Assistant Secretary;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) To take official notice of material facts not appearing in the evidence in the record, as long as the parties are afforded the opportunity to show evidence to the contrary;

(6) In his discretion, to keep the record open for a reasonable and specified time to receive additional written recommendations with supporting reasons and any additional data, views, and arguments from any person who has participated in the oral proceedings.

(d) Upon the completion of the oral presentations, the transcripts thereof, together with written submissions on the proceedings, exhibits filed during the hearing, and all posthearing comments, recommendations, and supporting reasons shall be certified by the officer presiding at the hearing to the Assistant Secretary.

1902.41—DECISION

(a) Within a reasonable time generally within 120 days after the expiration of the period provided for the submission of written data, views, and arguments on the issues on which no hearing is held, or within a reasonable time, generally not to exceed 120 days after the certification of the record of a hearing, the Assistant Secretary shall publish his decision in the FEDERAL REGISTER. His decision shall state whether or not an affirmative 18(e) determination has been made for the State plan or any separable portion thereof, or whether he intends to withdraw approval of the plan or any portion thereof pursuant to Part 1955 of this chapter. The action of the Assistant Secretary shall be taken after consideration of all information,including his evaluations of the actual operations of the plan, and information presented in written submissions ard in any hearings held under this subpart.

(b) Any decision under this section shall incorporate a concise statement of its grounds and purpose and shall respond to any substantial issues which may have been raised in written submissions or at the hearing.

(c) All decisions resulting in an affirmative 18(e) determination shall contain provisions amending the appropriate subparts of Part 1952 of this chapter.

(d) All decisions concerning the Assistant Secretary's determination under section 18(e) of the Act shall be published in the FEDERAL REGISTER.

1902.42—EFFECT OF AFFIRMATIVE 18(e) DETERMINATION

(a) In making an affirmative 18(e) determination the Assistant Secretary determines that a State has applied the provisions of its plan, or any modification thereof, in accordance with the criteria of section 18(c) of the Act and that the State has applied the provisions of this part in a manner which renders the actual operations of the State program "at least as effective as" operations under the Federal program.

(b) In the case of an affirmative 18(e) determination of a separable portion(s) of a plan, the Assistant Secretary determines that the State has applied the separable portion(s) of the plan in accordance with the criteria of section 18(c) of the Act in a manner comparable to Federal operations covering such portions and that the criteria of this part are being applied in a manner which renders the actual operations of such separable portion(s) of the State program "at least as effective as" operations of such portions under the Federal program.

(c) Upon making an affirmative 18(e) determination, the standards promulgated under section 6 of the Act and the enforcement provisions of section 5(a) (2), 8 (except for the purpose of continuing evaluations under section 18(f) of the Act), 9, 10, 13, and 17 of the Act shall not apply with respect to those occupational safety and health issues covered under the plan for which an affirmative 18(e) determination has been granted. The Assistant Secretary shall retain his authority under the above sections for those issues covered in the plan which have not been granted an affirmative 18(e) determination.

(d) The Assistant Secretary will retain jurisdiction under the citation and contest provisions of sections 9 and 10 of the Act and the imminent-danger provisions of section 13 where such proceedings have been commenced prior to the date of his determination.

1902.43—AFFIRMATIVE 18(e) DECISION

(a) In publishing his affirmative 18(e) decision in the FEDERAL REGISTER the Assistant Secretary's notice shall include, but shall not be limited to the following:

(1) Those issues under the plan over which the Assistant Secretary is withdrawing his standards and enforcement authority;

(2) A statement that the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act;

(3) Amendments to the appropriate subpart of Part 1952 of this chapter;

(4) A statement that the Assistant Secretary is not precluded from revoking his determination and reinstating his standards and enforcement authority under § 1902.47 *et seq.*, if his continuing evaluations under section 18(f) of the Act show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to its plan to the Assistant Secretary as required by 29 CFR Part 1953.

1902.44—REQUIREMENTS APPLICABLE TO STATE PLANS GRANTED AFFIRMATIVE 18(e) DETERMINATIONS

(a) A State whose plan, or modification thereof, has been granted an affirmative 18(e) determination will be required to maintain a program within the scope of such determination which will be "at least as effective as" operations under the Federal program in providing employee safety and health protection and covered workplaces within the comparable scope of the Federal program. This requirement includes submitting all required reports to the Assistant Secretary, as well as submitting supplements to the Assistant Secretary for his approval whenever there is a change in the State's program, whenever the result of evaluations conducted under section 18(f) show that some portion of a State plan has an adverse impact on the operations of the State plan or whenever the Assistant Secretary determines that any alteration in the Federal program could have an adverse impact on the "at least as effective as" status of the State program. See Part 1953 of this chapter.

(b) A substantial failure to comply with the requirements of this section may result in the revocation of the affirmative 18(e) determination and the resumption of Federal enforcement authority, and may also result in proceedings for the withdrawal of approval of the plan or any portion thereof pursuant to Part 1955 of this chapter.

1902.45 [Reserved]

1902.46—NEGATIVE 18(e) DETERMINATION

(a) This section sets out the procedures which shall be followed whenever the Assistant Secretary determines that a State's plan, or any separate portion thereof, has not met the criteria for an affirmative 18(e) determination.

(b) If the Assistant Secretary determines that a State plan, or a separable portion thereof, has not met the criteria of section 18(c) of the Act and that actual operations under the plan, or portion thereof, have not met the criteria for an affirmative determination set forth in § 1902.37, he shall retain his standards authority under section 6 of the Act and his enforcement authority under sections 5(a) (2), 8, 9, 10, 13, and 17 of the Act for those issues covered under the plan or such portions of the plan which were subject to his negative determination.

(c) A decision under this section may result in the commencement of proceedings for withdrawal of approval of the plan or any separable portion thereof pursuant to Part 1955 of this chapter.

(d) Where the Assistant Secretary determines that operations under a State plan or any separable portion thereof have not met the criteria for an affirmative 18(e) determination, but are not of such a nature as to warrant the initiation of withdrawal proceedings, the Assistant Secretary may, at his discretion, afford the State a reasonable time to meet the criteria for an affirmative 18 (e) determination after which time he may initiate proceedings for withdrawal of plan approval. This discretionary authority will be applied in the following manner:

(1) Upon determining that a State shall be subject to a final 18(e) determination, the Assistant Secretary shall notify the agency designated by the State to administer its program, within the State of his decision that the State's program, or a separable portion thereof, shall be subject to final 18(e) determination. The Assistant Secretary shall give the State a reasonable time, generally not less than 1 year, in which to meet the criteria for an affirmative 18(e) determination.

(2) The Assistant Secretary shall also publish a notice in the FEDERAL REGISTER outlining his reasons for not making an affirmative 18(e) determination at the time. The notice will also set forth the reasonable time the State was granted to meet the criteria for an affirmative 18(e) determination and set forth such conditions as the Assistant Secretary deems proper for the continuation of the State's plan or such portions subject to this action.

(3) The State shall be afforded an opportunity to agree to the conditions of the Assistant Secretary's decision.

(4) Upon the expiration of the time granted to the State to meet the criteria for an affirmative 18(e) determination under paragraph (d) (2) of this section, the Assistant Secretary may initiate proceedings to determine whether a State shall be granted an affirmative 18(e) determination. The procedures outlined in this subpart shall be applicable to any proceedings initiated under this paragraph.

PROCEDURE FOR RECONSIDERATION AND REVOCATION OF AN AFFIRMATIVE 18 (e) DETERMINATION

1902.47—RECONSIDERATION OF AN AFFIRMATIVE 18(e) DETERMINATION

(a) The Assistant Secretary may at any time reconsider on his own initiative or on patition of an interested person his decision granting an affirmative 18(e) determination.

(b) Such reconsideration shall be based on results of this continuing evaluation of a State plan after it has been granted an affirmative 18(e) determination.

1902.48 THE PROCEEDING

Whenever, as a result of his reconsideration, the Assistant Secretary proposes to revoke his affirmative 18(e) determination, he shall follow the procedures in the remaining sections of this subpart.

1902.49—GENERAL NOTICE

(a) Whenever the Assistant Secretary proposes to revoke an affirmative 18(e) determination, he shall publish a notice in the FEDERAL REGISTER meeting the requirements of the remaining paragraphs of this section. No later than 10 days following the publication of the notice in the FEDERAL REGISTER, the affected State agency shall publish, or cause to be published, reasonable notice within the State containing the same information.

(b) The notice shall indicate the reasons for the proposed action.

(c) The notice shall afford interested persons including the affected State, an opportunity to submit in writing, data, views, and arguments on the proposal within 35 days after publication of the notice in the FEDERAL REGISTER. The notice shall also provide that any interested person may request an informal hearing concerning the proposed revocation whenever particularized written objections thereto are filed within 35 days following publication of the notice in the FEDERAL REGISTER. If the Assistant Secretary finds that substantial objections have been filed, he shall afford an informal hearing on the proposed revocation under §1902.50.

(d) The Assistant Secretary may, upon his own initiative, give notice of an informal hearing affording an opportunity for oral comments concerning the proposed revocation.

1902.50—INFORMAL HEARING

Any informal hearing shall be legislative in type. The rules of procedure for each hearing shall be those contained in § 1902.40 and will be published with the notice thereof.

1902.51—CERTIFICATION OF THE RECORDS OF A HEARING

Upon completion of an informal hearing, the transcript thereof, together with written submissions, exhibits filed during the hearing, and any post-hearing presentations shall be certified by the officer presiding at the hearing to the Assistant Secretary.

1902.52—DECISION

(a) After consideration of all relevant information which has been presented, the Assistant Secretary shall issue a decision on the continuation or revocation of the affirmative 18(e) determination.

(b) The decision revoking the determination shall also reflect the Assistant Secretary's determination that concurrent Federal enforcement and standards authority will be reinstated within the State for a reasonable time until he has withdrawn his approval of the plan, or any separable portion thereof, pursuant to Part 1955 of this chapter or he has determined that the State has met the criteria for an 18(e) determination pursuant to the applicable procedures of this subpart.

1902.53—PUBLICATION OF DECISIONS

All decisions on the reconsideration of an affirmative 18(e) determination shall be published in the FEDERAL REGISTER.

PART 1903

INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

1903.1 Purpose and scope.
1903.2 Posting of notice; availability of the Act, regulations and applicable standards.
1903.3 Authority for inspection.
1903.4 Objection to inspection.
1903.5 Entry not a waiver.
1903.6 Advance notice of inspections.
1903.7 Conduct of inspections.
1903.8 Representatives of employers and employees.
1903.9 Trade secrets.
1903.10 Consultation with employees.
1903.11 Complaints by employees.
1903.12 Inspection not warranted; informal review.
1903.13 Imminent danger.
1903.14 Citations; notices of de minimis violations.
1903.15 Proposed penalties.
1903.16 Posting of citations.
1903.17 Employer and employee contests before the Review Commission.
1903.18 Failure to correct a violation for which a citation has been issued.
1903.19 Informal conferences.
1903.20 State administration.
1903.21 Definitions.

AUTHORITY: The provisions of this Part 1903 issued under secs. 8(c)(1), 8(e), 8(f)(2), 8(g)(2), 9 (a) and (b), 84 Stat. 1599, 1600, 1601; 29 U.S.C. 657, 658.

SOURCE: The provisions of this Part 1903 appear at 36 F.R. 17850, Sept. 4, 1971, unless otherwise noted.

1903.1—PURPOSE AND SCOPE

The Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) requires, in part, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act which are applicable to their own actions and conduct. The Act authorizes the Department of Labor to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under section 20(b), also authorizes the Secretary of Health, Education, and Welfare to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Occupational Safety and Health Review Commission, if contested by an employer or by an employee or authorized representative of employees, and for judicial review. The purpose of this Part 1903 is to prescribe rules and to set forth general policies for enforcement of the inspection, citation, and proposed penalty provisions of the Act. In situations where this Part 1903 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Secretary or his designee determines that an alternative course of action would better serve the objectives of the Act.

1903.2—POSTING OF NOTICE; AVAILABILITY OF THE ACT, REGULATIONS AND APPLICABLE STANDARDS

(a)

(1) Each employer shall post and keep posted a notice or notices, to be furnished by the Occupational Safety and Health Administration, U.S. Department of Labor, informing employees of the protections and obligations provided for in the Act and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Department of Labor. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

(2) Where a State has an approved poster informing employees of their protections and obligations as defined in § 1952.10 of this chapter, such poster, when posted by employers covered by the State plan, shall constitute compliance with the posting requirements of section 8(c) (1) of the Act. Employers whose operations are not within the issues covered by the State plan must comply with paragraph (a) (1) of this section.

(3) Reproductions or facsimilies of such Federal or State posters shall constitute compliance with the posting requirements of section 8(c) (1) of the Act where such reproductions or facsimilies are at least 8½ inches by 14 inches, and the printing size is at least 10 pt. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, generally not less than 36 pt.

[39 F.R. 39035, November 5, 1974.]

(b) "Establishment" means a single physical location where business is conducted or where services or industrial operations are peformed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Occupational Safety and Health Administration, U.S. Department of Labor. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as longshoremen, traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of paragraph (a) of this section.

(c) Copies of the Act, all regulations published in this chapter and all applicable standards will be available at all Area Offices of the Occupational Safety and Health Administration, U.S. Department of Labor. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.

(d) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of section 17 of the Act.

1903.3—AUTHORITY FOR INSPECTION

(a) Compliance Safety and Health Officers of the Department of Labor are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in this chapter, and other records which are directly related to the purpose of the inspection. Representatives of the Secretary of Health, Education, and Welfare are authorized to make inspections and to question employers and employees in order to carry out the functions of the Secretary of Health, Education, and Welfare under the Act. Inspections conducted by Department of Labor Compliance Safety and Health Officers and representatives of the Secretary of Health, Education, and Welfare under section 8 of the Act and pursuant to this Part 1903 shall not affect the authority of any State to conduct inspections in accordance with agreements and plans under section 18 of the Act.

(b) Prior to inspecting areas containing information which is classified by an agency of the United States Government in the interest of national security, Compliance Safety and Health Officers shall have obtained the appropriate security clearance.

1903.4—OBJECTION TO INSPECTION

(a) Upon a refusal to permit the Compliance Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with § 1903.3 or to permit a representative of employees to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace in accordance with § 1903.8. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The Compliance Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Area Director. The Area Director shall consult with the Regional Solicitor, who shall take appropriate action, including compulsory process, if necessary.

(b) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Area Director and the Regional Solicitor, circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are limited to):

(1) When the employee's past practice either implicitly or explicitly puts the Secretary on notice that a warrantless inspection will not be allowed;

(2) When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the worksite;

(3) When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

(c) With the approval of the Regional Administrator and the Regional Solicitor, compulsory process may also be obtained by the Area Director or his designee.

(d) For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including *ex parte* application for an inspection warrant or its equivalent. *Ex parte* inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

[45 F.R. 65916, October 3, 1980.]

1903.5—ENTRY NOT A WAIVER

Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act. Compliance Safety and Health Officers are not authorized to grant any such waiver.

1903.6—ADVANCE NOTICE OF INSPECTIONS

(a) Advance notice of inspections may not be given, except in the following situations: (1) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible; (2) in circumstances where the inspection can most effectivley be conducted after regular business hours or where special preparations are necessary for an inspection; (3) where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and (4) in other circumstances where the Area Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) In the situations described in paragraph (a) of this section, advance notice of inspections may be given only if authorized by the Area Director, except that in cases of apparent imminent danger, advance notice may be given by the Compliance Safety and Health Officer without such authorization if the Area Director is not immediately available. When advance notice is given it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See § 1903.8(b) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the Compliance Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Compliance Safety and Health Officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is

necessary to enable the Compliance Safety and Health Officer promptly to inform such representative of the inspection, may be subject to citation and penalty under section 17(c) of the Act. Advance notice in any of the situations described in paragraph (a) of this section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

(c) The Act provides in section 17(f) that any person who gives advance notice of any inspection to be conducted under the Act, without authority from the Secretary or his designees, shall, upon conviction, be punished by fine of not more than $1,000 or by imprisonment for not more than 6 months, or by both.

1903.7—CONDUCT OF INSPECTIONS

(a) Subject to the provisions of § 1903.3, inspections shall take place at such times and in such places of employment as the Area Director or the Compliance Safety and Health Officer may direct. At the beginning of an inspection, Compliance Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in § 1903.3 which they wish to review. However, such designation of records shall not preclude access to additional records specified in § 1903.3.

(b) Compliance Safety and Health Officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See § 1903.9 on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to measure their exposures.

[47 F.R. 6534, February 12, 1982]

(c) In taking photographs and samples, Compliance Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Compliance Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

(d) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

(e) At the conclusion of an inspection, the Compliance Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Compliance Safety and Health Officer any pertinent information regarding conditions in the workplace.

(f) Inspections shall be conducted in accordance with the requirements of this part.

1903.8—REPRESENTATIVES OF EMPLOYERS AND EMPLOYEES

(a) Compliance Safety and Health Officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Compliance Safety and Health Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Compliance Safety and Health Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) Compliance Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this section. If there is no authorized representative of employees, or if the Compliance Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(c) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Safety and Health Officer during the inspection.

(d) Compliance Safety and Health Officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of § 1903.9(d). With regard to information classified by an agency of the U. S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Compliance Safety and Health Officer in areas containing such information.

(e) Walkaround compensation.

[Removed].

[46 F.R. 28845, May 29, 1981]

1903.9—TRADE SECRETS

(a) Section 15 of the Act provides: "All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets." Section 15 of the Act is considered a statute within the meaning of section 552(b)(3) of title 5 of the United States Code, which exempts from the disclosure requirements matters that are "specifically exempted from disclosure by statute."

(b) Section 1905 of title 18 of the United States Code provides: "Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than 1 year, or both; and shall be removed from office or employment."

(c) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Compliance Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential—trade secret" and shall not be disclosed except in accordance with the provisions of section 15 of the Act.

(d) Upon the request of an employer, any authorized representative of employees under § 1903.8 in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the Compliance Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

1903.10—CONSULTATION WITH EMPLOYEES

Compliance Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Compliance Safety and Health Officer.

1903.11—COMPLAINTS BY EMPLOYEES

(a) Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Area Director or to a Compliance Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the Area Director or Compliance Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Department of Labor.

(b) If upon receipt of such notification the Area Director determines that the complaint meets the requirements set forth in paragraph (a) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.

(c) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Compliance Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of paragraph (a) of this section.

(d) Section 11(c)(1) of the Act provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act."

1903.12—INSPECTION NOT WARRANTED; INFORMAL REVIEW

(a) If the Area Director determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under § 1903.11, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Regional Administrator and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Regional Administrator and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the Regional Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Regional Administrator shall affirm, modify, or reverse the determination of the Area Director and furnish the complaining party and the employer and written notification of his decision and the reasons therefor. The decision of the Regional Administrator shall be final and not subject to further review.

(b) If the Area Director determines that an inspection is not warranted because the requirements of § 1903.11(a) have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of § 1903.11(a).

1903.13—IMMINENT DANGER

Whenever and as soon as a Compliance Safety and Health Officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he shall inform the affected employees and employers of the danger and that he is recommending a civil action to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of section 13(a) of the Act. Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Safety and Health Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

1903.14—CITATIONS; NOTICES OF DE MINIMIS VIOLATIONS

(a) The Area Director shall review the inspection report of the Compliance Safety and Health Officer. If, on the basis of the report the Area Director believes that the employer has violated a requirement of section 5 of the Act, of any standard, rule or order promulgated pursuant to section [illegible] of the Act, or of any substantive rule published in this chapter, he shall, if appropriate, consult with the Regional Solicitor, and he shall issue to the employer either a citation or a notice of de minimis violations which have no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this section after the expiration of 6 months following the occurrence of any alleged violation.

(b) Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the Act, standard, rule, regulation, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

(c) If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection under § 1903.11 (a) or a notification of violation under § 1903.11(c), a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

(d) After an inspection, if the Area Director determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under § 1903.11(a) or a notification of violation under § 1903.11(c), the informal review procedures prescribed in § 1903.12(a) shall be applicable. After considering all views presented, the Regional Administrator shall affirm the determination of the Area Director, order a reinspection, or issue a citation if he believes that the inspection disclosed a violation. The Regional Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor. The determination of the Regional Administrator shall be final and not subject to review.

(e) Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Review Commission.

1903.14a—PETITIONS FOR MODIFICATION OF ABATEMENT DATE

(a) An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond his reasonable control.

(b) A petition for modification of abatement date shall be in writing and shall include the following information:

(40 F.R. 11351, March 11, 1975.)

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(5) A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with subsection (c) (1) of this section and a certification of the date upon which such posting and service was made.

(c) A petition for modification of abatement date shall be filed with the Area Director of the United States Department of Labor who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) working days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

[40 F.R. 11351, March 11, 1975

(2) Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Area Director. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

(3) The Secretary or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to paragraphs (b) and (c) of this section. Such uncontested petitions shall become final orders pursuant to sections 10 (a) and (c) of the Act.

(4) The Secretary or his authorized representative shall not exercise his approval power until the expiration of fifteen (15) working days from the date the petition was posted or served pursuant to paragraphs (c) (1) and (2) of this section by the employer.

(d) Where any petition is objected to by the Secretary or affected employees, the petition, citation, and any objections shall be forwarded to the Commission within three (3) working days after the expiration of the fifteen (15) day period set out in paragraph (c) (4) of this section.

[40 F.R. 6334, February 11, 1975.]
[40 F.R. 11351, March 11, 1975.]

1903.15—PROPOSED PENALTIES

(a) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the Area Director shall notify the employer by certified mail or by personal service by the Compliance Safety and Health Officer of the proposed penalty under section 17 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notice, the employer notifies the Area Director in writi that he intends to contest the citation or the notification of proposed penalty before the Review Commission.

(b) The Area Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of section 17 of the Act.

(c) Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

1903.16—POSTING OF CITATIONS

(a) Upon receipt of any citation under the Act, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed (see § 1903.2 (b)), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see § 1903.2(b)), the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.

(b) Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days, whichever is later. The filing by the employer of a notice of intention to contest under § 1903.17 shall not affect his posting responsibility under this section unless and until the Review Commission issues a final order vacating the citation.

(c) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Review Commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

(d) Any employer failing to comply with the provisions of paragraphs (a) and (b) of this section shall be subject to citation and penalty in accordance with the provisions of section 17 of the Act.

1903.17—EMPLOYER AND EMPLOYEE CONTESTS BEFORE THE REVIEW COMMISSION

(a) Any employer to whom a citation or notice of proposed penalty has been issued may, under section 10(a) of the Act, notify the Area Director in writing that he intends to contest such citation or proposed penalty before the Review Commission. Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Area Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commission.

(b) Any employee or representative of employees of an employer to whom a citation has been issued may, under section 10(c) of the Act, file a written notice with the Area Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Area Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commission.

1903.18—FAILURE TO CORRECT A VIOLATION FOR WHICH A CITATION HAS BEEN ISSUED

(a) If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Area Director shall, if appropriate, consult with the Regional Solicitor, and he shall notify the employer by certified mail or by personal service by the Compliance Safety and Health Officer of such failure and of the additional penalty proposed under section 17(d) of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Review Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

(b) Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under section 10(b) of the Act, notify the Area Director in writing that he intends to contest such notification or proposed additional penalty before the Review Commission. Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Area Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commission.

(c) Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notification, the employer notifies the Area Director in writing that he intends to contest the notification or the proposed additional penalty before the Review Commission.

1903.19—INFORMAL CONFERENCES

At the request of an affected employer, employee, or representative of employees, the Regional Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at such conference shall be subject to the rules of procedure prescribed by the Review Commission. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Regional Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Regional Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 15-working-day period for filing a notice of intention to contest as prescribed in § 1903.17.

1903.20—STATE ADMINISTRATION

Nothing in this Part 1903 shall preempt the authority of any State to conduct inspections, to initiate enforcement proceedings or otherwise to implement the applicable provisions of State law with respect to State occupational safety and health standards in accordance with agreements and plans under section 18 of the Act and Parts 1901 and 1902 of this chapter.

1903.21—DEFINITIONS

(a) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970. (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.)

(b) The definitions and interpretations contained in section 3 of the Act shall be applicable to such terms when used in this Part 1903.

(c) "Working days" means Mondays through Fridays but shall not include Saturdays, Sundays, or Federal holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

(d) "Compliance Safety and Health Officer" means a person authorized by the Occupational Safety and Health Administration, U.S. Department of Labor, to conduct inspections.

(e) "Area Director" means the employee or officer regularly or temporarily in charge of an Area Office of the Occupational Safety and Health Administration, U.S. Department of Labor, or any other person or persons who are authorized to act for such employee or officer. The latter authorizations may include general delegations of the authority of an Area Director under this part to a Compliance Safety and Health Officer or delegations to such an officer for more limited purposes, such as the exercise of the Area Director's duties under § 1903.14(a). The term also includes any employee or officer exercising supervisory responsibilities over an Area Director. A supervisory employee or officer is considered to exercise concurrent authority with the Area Director

(f) "Assistant Regional Director" means the employee or officer regularly or temporarily in charge of a Region of the Occupational Safety and Health Administration, U.S. Department of Labor, or any other person or persons who are specifically designated to act for such employee or officer in his absence. The term also includes any employee or officer in the Occupational Safety and Health Administration exercising supervisory responsibilities over the Assistant Regional Director. Such supervisory employee or officer is considered to exercise concurrent authority with the Assistant Regional Director. No delegation of authority under this paragraph shall adversely affect the procedures for independent informal review of investigative determinations prescribed under § 1903.-12 of this part.

(g) "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under § 1903.11 (a) and (c), any reinspection, followup inspection, accident investigation or other inspection conducted under section 8(a) of the Act.

[38 F.R. 22625, August 23, 1973.]

PART 1904

RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

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1904.14 Employees not in fixed establishments.
1904.15 Small employers.
1904.20 Description of statistical program.
1904.21 Duties of employers.
1904.22 Effect of State plans.
Exhibit 1 OSHA Form 100 [Deleted.]

AUTHORITY: The provisions of this Part 1904 issued under secs. 8(c)(1), (2), 8(g)(2), and 24(e), 84 Stat. 1599, 1600, 1615; 29 U.S.C. 657, 673.

SOURCE: The provisions of this Part 1904 appear at 36 F.R. 12612, July 2, 1971, unless otherwise noted.

1904.1—PURPOSE AND SCOPE

The regulations in this part implement sections 8(c)(1), (2), 8(g)(2), and 24 (a) and (e) of the Occupational Safety and Health Act of 1970. These sections provide for recordkeeping and reporting by employers covered under the act as necessary or appropriate for enforcement of the act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. The regulations in this Part were promulgated with the cooperation of the Secretary of Health, Education, and Welfare.

1904.2 LOG AND SUMMARY OF OCCUPATIONAL INJURIES AND ILLNESSES

(a) Each employer shall, except as provided in paragraph (b) of this section, (1) maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment; and (2) enter each recordable injury and illness on the log and summary as early as practicable but no later than 6 working days after receiving information that a recordable injury or illness has occurred. For this purpose form OSHA No. 200 or an equivalent which is as readable and comprehensible to a person not familiar with it shall be used. The log and summary shall be completed in the detail provided in the form and instructions on form OSHA No. 200

[42 F.R. 65165, December 30, 1977.]

(b) Any employer may maintain the log of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

(1) There is available at the place where the log is maintained sufficient information to complete the log to a date within 6 working days after receiving information that a recordable case has occurred, as required by paragraph (a) of this section.

(2) At each of the employer's establishments, there is available a copy of the log which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

[36 F.R. 12612, July 2, 1971, as amended at 37 F.R. 736, Jan. 18, 1972.]

1904.3 PERIOD COVERED

Records shall be established on a calendar year basis.

[42 F.R. 65165, December 30, 1977.]

Instructions for OSHA No. 200

I. Log and Summary of Occupational Injuries and Illnesses

Each employer who is subject to the recordkeeping requirements of the Occupational Safety and Health Act of 1970 must maintain for each establishment a log of all recordable occupational injuries and illnesses. This form (OSHA No. 200) may be used for that purpose. A substitute for the OSHA No. 200 is acceptable if it is as detailed, easily readable, and understandable as the OSHA No. 200.

Enter each recordable case on the log within six (6) workdays after learning of its occurrence. Although other records must be maintained at the establishment to which they refer, it is possible to prepare and maintain the log at another location, using data processing equipment if desired. If the log is prepared elsewhere, a copy updated to within 45 calendar days must be present at all times in the establishment.

Logs must be maintained and retained for five (5) years following the end of the calendar year to which they relate. Logs must be available (normally at the establishment) for inspection and copying by representatives of the Department of Labor, or the Department of Health, Education and Welfare, or States accorded jurisdiction under the Act.

II. Changes in Extent of or Outcome of Injury or Illness

If, during the 5-year period the log must be retained, there is a change in an extent and outcome of an injury or illness which affects entries in columns 1, 2, 6, 8, 9, or 13, the first entry should be lined out and a new entry made. For example, if an injured employee at first required only medical treatment but later lost workdays away from work, the check in column 6 should be lined out, and checks entered in columns 2 and 3 and the number of lost workdays entered in column 4.

In another example, if an employee with an occupational illness lost workdays, returned to work, and then died of the illness, the entries in columns 9 and 10 should be lined out and the date of death entered in column 8.

The entire entry for an injury or illness should be lined out if later found to be nonrecordable. For example: an injury or illness which is later determined not to be work related, or which was initially thought to involve medical treatment but later was determined to have involved only first aid.

III. Posting Requirements

A copy of the totals and information following the fold line of the last page for the year must be posted at each establishment in the place or places where notices to employees are customarily posted. This copy must be posted no later than ***February 1 and must remain in place until March 1.***

Even though there were no injuries or illnesses during the year, zeros must be entered on the totals line, and the form posted.

The person responsible for the ***annual summary totals*** shall certify that the totals are true and complete by signing at the bottom of the form.

IV. Instructions for Completing Log and Summary of Occupational Injuries and Illnesses

Column A – **CASE OR FILE NUMBER.** Self-explanatory.

Column B – **DATE OF INJURY OR ONSET OF ILLNESS.**
For occupational injuries, enter the date of the work accident which resulted in injury. For occupational illnesses, enter the date of initial diagnosis of illness, or, if absence from work occurred before diagnosis, enter the first day of the absence attributable to the illness which was later diagnosed or recognized.

Columns C through F – Self-explanatory.

Columns 1 and 8 – **INJURY OR ILLNESS-RELATED DEATHS.**
Self-explanatory.

Columns 2 and 9 – **INJURIES OR ILLNESSES WITH LOST WORKDAYS.**
Self-explanatory.

Any injury which involves days away from work, or days of restricted work activity, or both must be recorded since it always involves one or more of the criteria for recordability.

Columns 3 and 10 – **INJURIES OR ILLNESSES INVOLVING DAYS AWAY FROM WORK.** Self-explanatory.

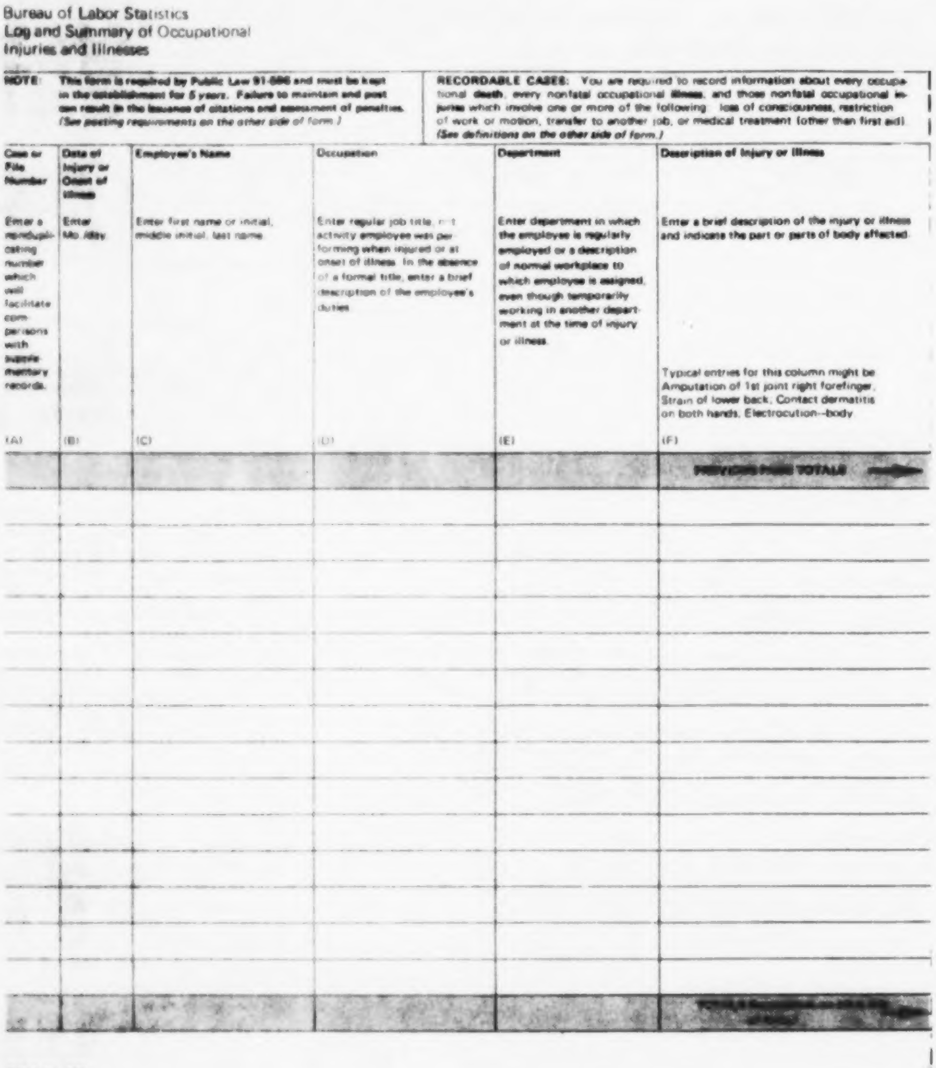
Columns 4 and 11 – **LOST WORKDAYS––DAYS AWAY FROM WORK.**
Enter the number of workdays (consecutive or not) on which the employee would have worked but could not because of occupational injury or illness. The number of lost workdays should not include the day of injury or onset of illness or any days on which the employee would not have worked even though able to work.

NOTE: For employees not having a regularly scheduled shift, such as certain truck drivers, construction workers, farm labor, casual labor, part-time employees, etc., it may be necessary to estimate the number of lost workdays. Estimates of lost workdays shall be based on prior work history of the employee AND days worked by employees, not ill or injured, working in the department and/or occupation of the ill or injured employee.

Columns 5 and 12 – **LOST WORKDAYS––DAYS OF RESTRICTED WORK ACTIVITY.**
Enter the number of workdays (consecutive or not) on which because of injury or illness:

(1) the employee was assigned to another job on a temporary basis, or
(2) the employee worked at a permanent job less than full time, or
(3) the employee worked at a permanently assigned job but could not perform all duties normally connected with it.

The number of lost workdays should not include the day of injury or onset of illness or any days on which the employee would not have worked even though able to work.



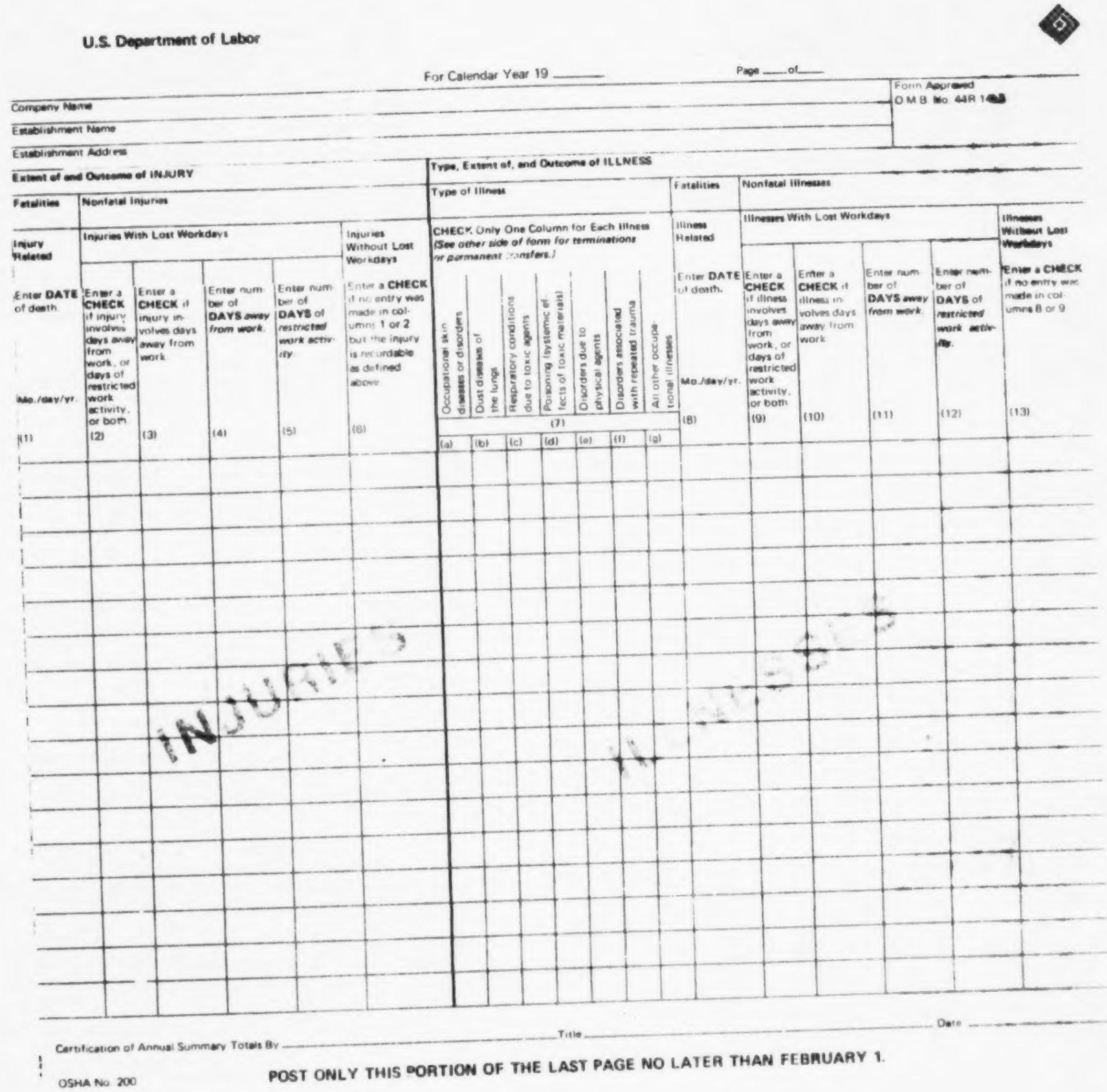
Bureau of Labor Statistics
Log and Summary of Occupational
Injuries and Illnesses

NOTE: **This form is required by Public Law 91-596 and must be kept in the establishment for 5 years. Failure to maintain and post can result in the issuance of citations and assessment of penalties.** *(See posting requirements on the other side of form.)*

RECORDABLE CASES: You are required to record information about every occupational **death**, every nonfatal occupational **illness**, and those nonfatal occupational **injuries** which involve one or more of the following: loss of consciousness, restriction of work or motion, transfer to another job, or medical treatment (other than first aid). ***(See definitions on the other side of form.)***

Case or File Number	**Date of Injury or Onset of Illness**	**Employee's Name**	**Occupation**	**Department**	**Description of Injury or Illness**
Enter a nonduplicating number which will facilitate comparisons with supplementary records.	Enter Mo./day.	Enter first name or initial, middle initial, last name.	Enter regular job title, not activity employee was performing when injured or at onset of illness. In the absence of a formal title, enter a brief description of the employee's duties.	Enter department in which the employee is regularly employed or a description of normal workplace to which employee is assigned, even though temporarily working in another department at the time of injury or illness.	Enter a brief description of the injury or illness and indicate the part or parts of body affected. Typical entries for this column might be: Amputation of 1st joint right forefinger; Strain of lower back; Contact dermatitis on both hands; Electrocution--body.
(A)	(B)	(C)	(D)	(E)	(F)
					PREVIOUS PAGE TOTALS →
					[illegible]

OSHA No. 200



U.S. Department of Labor

For Calendar Year 19 ____ Page ___ of ___

Form Approved
O M B No. 44R 14[illegible]

Company Name

Establishment Name

Establishment Address

Extent of and Outcome of INJURY						**Type, Extent of, and Outcome of ILLNESS**												
Fatalities	**Nonfatal Injuries**					**Type of Illness**							**Fatalities**	**Nonfatal Illnesses**				
Injury Related	**Injuries With Lost Workdays**				Injuries Without Lost Workdays	**CHECK Only One Column for Each Illness** ***(See other side of form for terminations or permanent transfers.)***							**Illness Related**	**Illnesses With Lost Workdays**				**Illnesses Without Lost Workdays**
Enter **DATE** of death. Mo./day/yr.	Enter a **CHECK** if injury involves days away from work, or days of restricted work activity, or both	Enter a **CHECK** if injury involves days away from work	Enter number of **DAYS *away from work.***	Enter number of **DAYS** of *restricted work activity.*	Enter a **CHECK** if no entry was made in columns **1 or 2** but the injury is recordable as defined above	Occupational skin diseases or disorders	Dust diseases of the lungs	Respiratory conditions due to toxic agents	Poisoning (systemic effects of toxic materials)	Disorders due to physical agents	Disorders associated with repeated trauma	All other occupational illnesses	Enter **DATE** of death. Mo./day/yr.	Enter a **CHECK** if illness involves days away from work, or days of restricted work activity, or both	Enter a **CHECK** if illness involves days away from work	Enter number of **DAYS *away from work.***	Enter number of **DAYS** of ***restricted work activity.***	**Enter a CHECK** if no entry was made in columns 8 or 9
						(7)												
(1)	(2)	(3)	(4)	(5)	(6)	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(8)	(9)	(10)	(11)	(12)	(13)

INJURIES

ILLNESSES

Certification of Annual Summary Totals By ____________ Title ____________ Date ____________

OSHA No. 200

POST ONLY THIS PORTION OF THE LAST PAGE NO LATER THAN FEBRUARY 1.

Columns
6 and 13 – **INJURIES OR ILLNESSES WITHOUT LOST WORKDAYS.** Self-explanatory.

Columns 7a
through 7g – **TYPE OF ILLNESS.**
Enter a check in only ***one*** column for each illness.

TERMINATION OR PERMANENT TRANSFER–Place an asterisk to the right of the entry in columns 7a through 7g (type of illness) which represented a termination of employment or permanent transfer.

V. Totals

Add number of entries in columns 1 and 8.
Add number of checks in columns 2, 3, 6, 7, 9, 10, and 13.
Add number of days in columns 4, 5, 11, and 12.
Totals are to be generated for each column at the end of each page and at the end of each year. ***Only*** the yearly totals are required for posting.

If an employee's loss of workdays is continuing at the time the totals are summarized, estimate the number of future workdays the employee will lose and add that estimate to the workdays already lost and include this figure in the annual totals. No further entries are to be made with respect to such cases in the next year's log.

VI. Definitions

OCCUPATIONAL INJURY is any injury such as a cut, fracture, sprain, amputation, etc., which results from a work accident or from an exposure involving a single incident in the work environment.
NOTE: Conditions resulting from animal bites, such as insect or snake bites or from one-time exposure to chemicals, are considered to be injuries.

OCCUPATIONAL ILLNESS of an employee is any abnormal condition or disorder, other than one resulting from an occupational injury, caused by exposure to environmental factors associated with employment. It includes acute and chronic illnesses or diseases which may be caused by inhalation, absorption, ingestion, or direct contact.

The following listing gives the categories of occupational illnesses and disorders that will be utilized for the purpose of classifying recordable illnesses. For purposes of information, examples of each category are given. These are typical examples, however, and are not to be considered the complete listing of the types of illnesses and disorders that are to be counted under each category.

7a. **Occupational Skin Diseases or Disorders**
Examples: Contact dermatitis, eczema, or rash caused by primary irritants and sensitizers or poisonous plants; oil acne; chrome ulcers; chemical burns or inflammations; etc.

7b. **Dust Diseases of the Lungs (Pneumoconioses)**
Examples: Silicosis, asbestosis, coal worker's pneumoconiosis, byssinosis, siderosis, and other pneumoconioses.

7c. **Respiratory Conditions Due to Toxic Agents**
Examples: Pneumonitis, pharyngitis, rhinitis or acute congestion due to chemicals, dusts, gases, or fumes; farmer's lung; etc.

7d. **Poisoning (Systemic Effect of Toxic Materials)**
Examples: Poisoning by lead, mercury, cadmium, arsenic, or other metals; poisoning by carbon monoxide, hydrogen sulfide, or other gases; poisoning by benzol, carbon tetrachloride, or other organic solvents; poisoning by insecticide sprays such as parathion, lead arsenate; poisoning by other chemicals such as formaldehyde, plastics, and resins, etc.

7e. **Disorders Due to Physical Agents (Other than Toxic Materials)**
Examples: Heatstroke, sunstroke, heat exhaustion, and other effects of environmental heat; freezing, frostbite, and effects of exposure to low temperatures; caisson disease; effects of ionizing radiation (isotopes, X-rays, radium); effects of nonionizing radiation (welding flash, ultraviolet rays, microwaves, sunburn); etc.

7f. **Disorders Associated With Repeated Trauma**
Examples: Noise-induced hearing loss; synovitis, tenosynovitis, and bursitis; Raynaud's phenomena; and other conditions due to repeated motion, vibration, or pressure.

7g. **All Other Occupational Illnesses**
Examples: Anthrax, brucellosis, infectious hepatitis, malignant and benign tumors, food poisoning, histoplasmosis, coccidioidomycosis, etc.

MEDICAL TREATMENT includes treatment (other than first aid) administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does NOT include first-aid treatment (one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care) even though provided by a physician or registered professional personnel.

ESTABLISHMENT: A single physical location where business is conducted or where services or industrial operations are performed (for example: a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office). Where distinctly separate activities are performed at a single physical location, such as construction activities operated from the same physical location as a lumber yard, each activity shall be treated as a separate establishment.

For firms engaged in activities which may be physically dispersed, such as agriculture, construction; transportation; communications; and electric, gas, and sanitary services, records may be maintained at a place to which employees report each day.

Records for personnel who do not primarily report or work at a single establishment, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

WORK ENVIRONMENT is comprised of the physical location, equipment, materials processed or used, and the kinds of operations performed in the course of an employee's work, whether on or off the employer's premises.

1904.4—SUPPLEMENTARY RECORD

In addition to the log of occupational injuries and illnesses provided for under § 1904.2, each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for each occupational injury or illness for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying Occupational Safety and Health Administration Form OSHA No. 101. Workmen's compensation, insurance, or other reports are acceptable alternative records if they contain the information required by Form OSHA No. 101. If no acceptable alternative record is maintained for other purposes, Form OSHA No. 101 shall be used or the necessary information shall be otherwise maintained.

1904.5 ANNUAL SUMMARY

(a) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the form OSHA No. 200 and the following information from that form: calendar year covered, company name, establishment name, establishment address, certification signature, title, and date. A form OSHA No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered on the totals line, and the form must be posted.

(b) The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar-year's occupational injuries and illnesses shall be posted on form OSHA No. 102.

(c) Each employer, or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the log and summary certifying that the summary is true and complete.

(d)

(1) Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under § 1903.2(a) (1) of this chapter. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report for work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

[42 F.R. 65165, December 30, 1977.]

(2) A failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to section 9 and 17 of the Act.

SUPPLEMENTARY RECORD OF OCCUPATIONAL INJURIES AND ILLNESSES

To supplement the Log and summary of Occupational Injuries and Illnesses (OSHA No. 200), each establishment must maintain a record of each recordable occupational injury or illness. Workmen's compensation, insurance, or other reports are acceptable as records if they contain all facts listed below or are supplemented to do so. If no suitable report is made for other purposes, this form (OSHA No. 101) may be used or the necessary facts can be listed on a separate plain sheet of paper. These records must also be available in the establishment without delay and at reasonable times for examination by representatives of the Department of Labor and the Department of Health, Education and Welfare, and States accorded jurisdiction under the Act. The records must be maintained for a period of not less than five years following the end of the calendar year to which they relate.

Such records must contain at least the following facts:

1) *About the employer*—name, mail address, and location if different from mail address.

2) *About the injured or ill employee*—name, social security number, home address, age, sex, occupation, and department.

3) *About the accident or exposure to occupational illness*—place of accident or exposure, whether it was on employer's premises, what the employee was doing when injured, and how the accident occurred.

4) *About the occupational injury or illness*—description of the injury or illness, including part of body affected; name of the object or substance which directly injured the employee; and date of injury or diagnosis of illness.

5) *Other*—name and address of physician; if hospitalized, name and address of hospital; date of report; and name and position of person preparing the report.

SEE DEFINITIONS ON THE BACK OF OSHA FORM 200.

[42 F.R. 65165, December 30, 1977.]

OSHA No. 101
Case or File No. ----------

Form approved
OMB No. 44R 1453

Supplementary Record of Occupational Injuries and Illnesses

EMPLOYER

1. Name --
2. Mail address --
(No. and street) (City or town) (State)
3. Location, if different from mail address --

INJURED OR ILL EMPLOYEE

4. Name -- Social Security No. ----------------
(First name) (Middle name) (Last name)
5. Home address --
(No. and street) (City or town) (State)
6. Age ------------ 7. Sex: Male------------ Female------------ (Check one)
8. Occupation --
(Enter regular job title, *not* the specific activity he was performing at time of injury.)
9. Department --
(Enter name of department or division in which the injured person is regularly employed, even though he may have been temporarily working in another department at the time of injury.)

THE ACCIDENT OR EXPOSURE TO OCCUPATIONAL ILLNESS

10. Place of accident or exposure --
(No. and street) (City or town) (State)
If accident or exposure occurred on employer's premises, give address of plant or establishment in which it occurred. Do not indicate department or division within the plant or establishment. If accident occurred outside employer's premises at an identifiable address, give that address. If it occurred on a public highway or at any other place which cannot be identified by number and street, please provide place references locating the place of injury as accurately as possible.
11. Was place of accident or exposure on employer's premises? ------------ (Yes or No)
12. What was the employee doing when injured? --
(Be specific. If he was using tools or equipment or handling material,
----
name them and tell what he was doing with them.)
----
13. How did the accident occur? --
(Describe fully the events which resulted in the injury or occupational illness. Tell what
----
happened and how it happened. Name any objects or substances involved and tell how they were involved. Give
----
full details on all factors which led or contributed to the accident. Use separate sheet for additional space.)

OCCUPATIONAL INJURY OR OCCUPATIONAL ILLNESS

14. Describe the injury or illness in detail and indicate the part of body affected. ----------------
(e.g.: amputation of right index finger
----
at second joint; fracture of ribs; lead poisoning; dermatitis of left hand, etc.)
15. Name the object or substance which directly injured the employee. (For example, the machine or thing he struck against or which struck him; the vapor or poison he inhaled or swallowed; the chemical or radiation which irritated his skin; or in cases of strains, hernias, etc., the thing he was lifting, pulling, etc.)

----
16. Date of injury or initial diagnosis of occupational illness ------------------------------
(Date)
17. Did employee die? ------------ (Yes or No)

OTHER

18. Name and address of physician --
19. If hospitalized, name and address of hospital ------------------------------------
----

Date of report ---------------- Prepared by --
Official position --------------------------

1904.6—RETENTION OF RECORDS

Records provided for in §§ 1904.2, 1904.4, and 1904.5 (including form OSHA No. 200 and its predecessor forms OSHA No. 100 and OSHA No. 102) shall be retained in each establishment for 5 years following the end of the year to which they relate.

[42 F.R. 65166, December 30, 1977.]

1904.7—ACCESS TO RECORDS

(a) Each employer shall provide, upon request, records provided for in §§ 1904.2, 1904.4, and 1904.5, for inspection and copying by any representative of the Secretary of Labor for the purpose of carrying out the provisions of the act, and by representatives of the Secretary of Health, Education, and Welfare during any investigation under section 20(b) of the act, or by any representative of a State accorded jurisdiction for occupational safety and health inspections or for statistical compilation under sections 18 and 24 of the act.

(b)

(1) The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in § 1904.2 shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

(2) Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

(3) Access to the log provided under this section shall pertain to all logs retained under the requirements of § 1904.6.

[43 F.R. 31329, July 21, 1978.]

1904.8—REPORTING OF FATALITY OR MULTIPLE HOSPITALIZATION ACCIDENTS

Within 48 hours after the occurrence of an employment accident which is fatal to one or more employees or which results in hospitalization of five or more employees, the employer of any employees so injured or killed shall report the accident either orally or in writing to the nearest office of the Area Director of the Occupational Safety and Health Administration, U.S. Department of Labor. The reporting may be by telephone or telegraph. The report shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. The Area Director may require such additional reports, in writing or otherwise, as he deems necessary, concerning the accident.

1904.9—FALSIFICATION, OR FAILURE TO KEEP RECORDS OR REPORTS

(a) Section 17(g) of the Act provides that "Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment, for not more than 6 months or both."

(b) Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in sections 9, 10, and 17 of the Act.

[36 F.R. 12612, July 2, 1971, as amended at 37 F.R. 737, Jan. 18, 1972.]

1904.10—RECORDKEEPING UNDER APPROVED STATE PLANS

Records maintained by an employer and reports submitted pursuant to, and in accordance with the requirements of an approved State **plan under section 18 of the act shall be regarded as compliance with this Part 1904.**

1904.11—CHANGE OF OWNERSHIP

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this part. These records shall be retained at each establishment to which they relate, for the period, or remainder thereof, required under § 1904.6.

1904.12—DEFINITIONS

(a) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.).

(b) The definitions and interpretations contained in section (2) of the Act shall be applicable to such terms when used in this Part 1904.

(c) "Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:

(1) Fatalities, regardless of the time between the injury and death, or the length of the illness; or

(2) Lost workday cases, other than fatalities, that result in lost workdays; or

(3) Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve: loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(d) "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel.

(e) "First aid" is any one-time treatment, and any followup visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and followup visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(f) "Lost workdays:" The number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

(g)

(1) "Establishment:" A single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities operated from the same physical location as a lumber yard), each activity shall be treated as a separate establishment.

(2) For firms engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records may be maintained at a place to which employees report each day.

(3) Records for personnel who do not primarily report or work at a single establishment, and who are generally not supervised in their daily work, such as traveling salesmen, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

[36 F.R. 12612, July 2, 1971, as amended at 37 F.R. 20822, Oct. 4, 1972.]

1904.13—PETITIONS FOR RECORDKEEPING EXCEPTIONS

(a) Submission of petition

Any employer who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in paragraph (c) of this section to the Regional Commissioner of the Bureau of Labor Statistics wherein the establishment involved is located.

(b) Opportunity for comment.

Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Regional Commissioner involved within 10 working days following the receipt of notice under paragraph (c) (5) of this section.

[42 F.R. 65166, December 30, 1977.]

(c) Contents of petition.

A petition filed under paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) Specifications of the reasons for seeking relief;

(4) A description of the different recordkeeping procedures which are proposed by the applicant;

(5) A statement that the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means. A statement posted pursuant to this subparagraph shall be posted in each establishment in the same manner that notices are required to be posted under § 1903.2(a) of this chapter. The applicant shall also state that he has informed his affected employees of their rights under paragraph (b) of this section;

(6) In the event an employer has more than one establishment he shall submit a list of the States in which such establishments are located and the number of establishments in each such State. In the further event that certain of the employer's establishments would not be affected by the petition, the employer shall identify every establishment which would be affected by the petition and give the State in which they are located.

(d) Referrals to Assistant Commissioner.

Whenever a Regional Commissioner receives a petition from an employer having one or more establishments beyond the geographic boundary of his region, or a petition from a class of employers having any establishment beyond the boundary of his region, he shall refer the petition to the Assistant Commissioner for action.

[42 F.R. 65166, December 30, 1977.]

(e) Additional Notice, Conferences.

(1) In addition to the actual notice provided for in paragraph (c) (5) of this section, the Assistant Commissioner, or the Regional Commissioner, as the case may be, may provide, or cause to be provided, such additional notice of the petition as he may deem appropriate.

(2) The Assistant Commissioner or the Regional Commissioner, as the case may be, may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

[42 F.R. 65166, December 30, 1977.]

(f) Action.

After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if Regional Commissioner or the Assistant Commissioner, as the case may be, finds that the alternative procedure proposed will not hamper or interfere with the purposes of the Act and will provide equivalent information, he may grant the petition subject to such conditions as he may determine appropriate, and subject to revocation for cause.

[42 F.R. 65166, December 30, 1977.]

(g) Publication.

Whenever any relief is granted to an applicant under this Act, notice of such relief, and the reasons therefor, shall be published in the FEDERAL REGISTER.

(h) Revocation.

Whenever any relief under this section is sought to be revoked for any failure to comply with the conditions thereof, an opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall: (1) Be notified in writing of the facts or conduct which may warrant the action; and (2) be given an opportunity to demonstrate or achieve compliance.

(i) Compliance after submission of petitions.

The submission of a petition or any delay by the Regional Commissioner, or the Assistant Commissioner, as the case may be, in acting upon a petition shall not relieve any employer from any obligation to comply with this part. However, the Regional Commissioner or the Assistant Commissioner, as the case may be, shall give notice of the denial of any petition within a reasonable time.

[42 F.R. 35166, December 30, 1977.]

(j) Consultation.

There shall be consultation between the appropriate representatives of the Occupational Safety and Health Administration and the Bureau of Labor Statistics in order to insure the effective implementation of this section.

[36 F.R. 12612, July 2, 1971, as amended at 37 F.R. 737, Jan. 18, 1972.]

1904.14—EMPLOYEES NOT IN FIXED ESTABLISHMENTS

Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of §§ 1904.2, 1904.4, and 1904.6 with respect to such employees by:

(a) Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

(b) Having the address and telephone number of the central place available at each worksite; and

(c) Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

[37 F.R. 20822, Oct. 4, 1971.]

1904.15 SMALL EMPLOYERS.

An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

(a) Obligation to report under § 1904.8 concerning fatalities or multiple hospitalization accidents; and

(b) Obligation to maintain a log of occupational injuries and illnesses under § 1904.2 and to make reports under § 1904.21 upon being notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

[42 F.R. 38568, July 29, 1977.]

1904.20—DESCRIPTION OF STATISTICAL PROGRAM

(a) Section 24 of the Act directs the Secretary of Labor, in consultation with the Secretary of Health, Education, and Welfare, to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The Commissioner of the Bureau of Labor Statistics has been delegated this authority by the Secretary of Labor. The program shall consist of periodic surveys of occupational injuries and illnesses.

[42 F.R. 65166, December 30, 1977.]

(b) The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within strata. Stratification and sampling will be carried out by State and other jurisdictions in order to provide the most efficient sample for eventual State estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. Nationally, the survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit SIC classification in nonmanufacturing. In participating States where the sample size has been supplemented significantly, comparable estimates are possible.

[37 F.R. 2439, Feb. 1, 1972.]

1904.21—DUTIES OF EMPLOYERS

Upon receipt of an Occupational Injuries and Illnesses Survey Form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

[42 F.R. 65166, December 30, 1977.]

1904.22—EFFECT OF STATE PLANS

Nothing in any State plan approved under section 18(c) of the Act shall affect the duties of employers to submit statistical report forms under § 1904.21.

[37 F.R. 2439, Feb. 1, 1972.]

EXHIBIT I [DELETED.]

[42 F.R. 65166, December 30, 1977.]

PART 1905

RULES OF PRACTICE FOR VARIANCES, LIMITATIONS, VARIATIONS, TOLERANCES, AND EXEMPTIONS UNDER THE WILLIAMS-STEIGER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

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SUBPART E—EFFECT OF INITIAL DECISIONS

1905.50 Effect of appeal of a hearing examiner's decision.
1905.51 Finality for purposes of judicial review.

AUTHORITY: The provisions of this Part 1905 issued under secs. 6, 8, 16, 84 Stat. 1593, 1598, 1606; 29 U.S.C. 655, 657, 665.

SOURCE: The provisions of this Part 1905 appear at 36 F.R. 12290, June 30, 1971, unless otherwise noted.

SUBPART A—GENERAL

1905.1—PURPOSE AND SCOPE

(a) This part contains rules of practice for administrative proceedings (1) to grant variances and other relief under sections 6(b)(6)(A) and 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970, and (2) to provide limitations, variations, tolerances, and exemptions under section 16 of the Act.

(b) These rules shall be construed to secure a prompt and just conclusion of proceedings subject thereto.

(c) The rules of practice in this part do not apply to the granting of variances under section 6(b)(6)(C). Whenever appropriate, the procedure for granting such a variance shall be published in the FEDERAL REGISTER.

1905.2—DEFINITIONS

As used in this part, unless the context clearly requires otherwise—

(a) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970.

(b) "Secretary" means the Secretary of Labor.

(c) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

(d) "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumentality of the United States or of a State.

(e) "Party" means a person admitted to participate in a hearing conducted in accordance with Subpart C of this part. An applicant for relief and any affected employee shall be entitled to be named parties. The Department of Labor, represented by the Office of the Solicitor, shall be deemed to be a party without the necessity of being named.

(f) "Affected employee" means an employee who would be affected by the grant or denial of a variance, limitation, variation, tolerance, or exemption, or any one of his authorized representatives, such as his collective bargaining agent.

1905.3—PETITIONS FOR AMENDMENTS TO THIS PART

Any person may at any time petition the Assistant Secretary in writing to revise, amend, or revoke any provisions of this part. The petition should set forth either the terms or the substance of the rule desired, with a concise statement of the reasons therefor and the effects thereof.

1905.4—AMENDMENTS TO THIS PART

The Assistant Secretary may at any time revise, amend, or revoke any provisions of this part, on his own motion or upon the written petition of any person.

1905.5—EFFECT OF VARIANCES

All variances granted pursuant to this part shall have only future effect. In his discretion, the Assistant Secretary may decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Occupational Safety and Health Review Commission or appropriate State review authority until the completion of such proceeding.

[40 F.R. 25449, June 16, 1975.]

1905.6—PUBLIC NOTICE OF A GRANTED VARIANCE, LIMITATION, VARIATION, TOLERANCE, OR EXEMPTION

Every final action granting a variance, limitation, variation, tolerance, or exemption under this part shall be published in the FEDERAL REGISTER. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

1905.7—FORM OF DOCUMENTS; SUBSCRIPTION; COPIES

(a) No particular form is prescribed for applications and other papers which may be filed in proceedings under this part. However, any applications and other papers shall be clearly legible. An original and six copies of any application or other papers shall be filed. The original shall be typewritten. Clear carbon copies, or printed or processed copies are acceptable copies.

(b) Each application or other paper which is filed in proceedings under this part shall be subscribed by the person filing the same or by his attorney or other authorized representative.

SUBPART B—APPLICATIONS FOR VARIANCES, LIMITATIONS, VARIATIONS, TOLERANCES, EXEMPTIONS AND OTHER RELIEF

1905.10—VARIANCES AND OTHER RELIEF UNDER SECTION 6(b)(6)(A)

(a) Application for variance.

Any employer, or class of employers, desiring a variance from a standard, or portion thereof, authorized by section 6(b) (6) (A) of the Act may file a written application containing the information specified in paragraph (b) of this section with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(b) Contents.

An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the standard or portion thereof from which the applicant seeks a variance;

(4) A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;

(5) A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;

(6) A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standard;

(7) A statement of the facts the applicant would show to establish that

(i) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(ii) He is taking all available steps to safeguard his employees against the hazards covered by the standard; and

(iii) He has an effective program for coming into compliance with the standard as quickly as practicable;

(8) Any request for a hearing, as provided in this part;

(9) A statement that the applicant has informed his affected employees of the application by giving a copy thereof to their authorized representative, posting a statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

(10) A description of how affected employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.

(11) Where the requested variance would be applicable to employment or places of employment in more than one State, including at least one State with a State plan approved under section 18 of the Act, and involves a standard, or portion thereof, identical to the State standard effective under such plan:

(i) A side-by-side comparison of the Federal standard, or portion thereof, involved with the State standard, or portion thereof, identical in substance and requirements;

(ii) A certification that the employer or employers have not filed for such variance on the same material facts for the same employment or place of employment with any State authority having jurisdiction under an approval plan over any employment or place of employment covered in the application; and

(iii) A statement as to whether, with an identification of, any citation for violations of the State standard, or portion thereof, involved have been issued to the employer or employers by any of the State authorities enforcing the standard under a plan, and are pending.

[40 F.R. 25449, June 16, 1975.]

(c) Interim order.

(1) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

(2) Notice of denial of application. If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

(3) Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published in the FEDERAL REGISTER. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

1905.11—VARIANCES AND OTHER RELIEF UNDER SECTION 6(d)

(a) Application for variance.

Any employer, or class of employers, desiring a variance authorized by section 6(d) of the Act may file a written application containing the information specified in paragraph (b) of this section, with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(b) Contents.

An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

(4) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;

(5) A certification that the applicant has informed his employees of the application by

(i) Giving a copy thereof to their authorized representative;

(ii) Posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and

(iii) By other appropriate means;

(6) Any request for a hearing, as provided in this part; and

(7) A description of how employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.

(8) Where the requested variance would be applicable to employment or places of employment in more than one State, including at least one State with a State plan approved under section 18 of the Act, and involves a standard, or portion thereof, identical to a State standard effective under such plan:

(i) A side-by-side comparison of the Federal standard, or portion thereof, involved with the State standard, or portion thereof, identical in substance and requirements:

(ii) A certification that the employer or employers have not filed for such variance on the same material facts for the same employment or place of employment with any State authority having jurisdiction under an approved plan over any employment or place of employment covered in the application; and

(iii) A statement as to whether, with an identification of, any citations for violations of the State standard, or portion thereof, involved have been issued to the employer or employers by any of the State authorities enforcing the standard under a plan, and are pending.

[40 F.R. 25449, June 16, 1975.]

(c) Interim order.

(1) **Application.** An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

(2) **Notice of denial of application.** If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefor.

(3) **Notice of the grant of an interim order.** If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in the FEDERAL REGISTER. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

1905.12—LIMITATIONS, VARIATIONS, TOLERANCES, OR EXEMPTIONS UNDER SECTION 16

(a) Application.

Any person, or class of persons, desiring a limitation, variation, tolerance, or exemption authorized by section 16 of the Act may file an application containing the information specified in paragraph (b) of this section, with the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

(b) Contents.

An application filed pursuant to paragraph (a) of this section shall include:

(1) The name and address of the applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the provision of the Act to or from which the applicant seeks a limitation, variation, tolerance, or exemption.

(4) A representation showing that the limitation, variation, tolerance, or exemption sought is necessary and proper to avoid serious impairment of the national defense;

(5) Any request for a hearing, as provided in this part; and

(6) A description of how employees have been informed of the application and of their right to petition the Assistant Secretary for a hearing.

(c) Interim order.

(1) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the limitation, variation, tolerance, or exemption filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The Assistant Secretary may rule ex parte upon the application.

(2) Notice of denial of application. If an application filed pursuant to subparagraph (1) of this paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied, by a brief statement of the grounds therefor.

(3) Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published in the FEDERAL REGISTER. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

1905.13—MODIFICATION, REVOCATION, AND RENEWAL OF RULES OR ORDERS

(a) Modification or revocation.

(1) An affected employer or an affected employee may apply in writing to the Assistant Secretary of Labor for Occupational Safety and Health for a modification or revocation of a rule or order issued under section 6(b)(6)(A), 6(d), or 16 of the Act. The application shall contain:

(i) The name and address of the applicant;

(ii) A description of the relief which is sought;

(iii) A statement setting forth with particularity the grounds for relief;

(iv) If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:

(a) Giving a copy thereof to their authorized representative;

(b) Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the the application itself); and

(c) Other appropriate means.

(v) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and

(vi) Any request for a hearing, as provided in this part.

(2) The Assistant Secretary may on his own motion proceed to modify or revoke a rule or order issued under section 6(b)(6)(A), 6(d), or 16 of the Act. In such event, the Assistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of his intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take such other action as may be appropriate to give actual notice to affected employees. Any request for a hearing shall include a short and plain statement of:

(i) How the proposed modification or revocation would affect the requesting party; and

(ii) What the requesting party would seek to show on the subjects or issues involved.

(b) Renewal.

Any final rule or order issued under section 6(b)(6)(A) or 16 of the Act may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

(c) Multi-state variances.

Where a Federal variance has been granted with multi-state applicability, including applicability in a State operating under a State plan approved under section 18 of the Act, from a standard, or portion thereof, identical to a State standard, or portion thereof, without filing the information required in §§ 1905.10(b)(11) or 1905.11(b)(8) of this chapter, such variance shall likewise be deemed an authoritative interpretation of the employer(s)' compliance obligations with regard to the State standard, or portion thereof, upon filing the information required under §§ 1905.10(b)(11) or 1905.11(b)(8) of this chapter, provided no objections of substance are found to be interposed by the State authority under § 1905.14 of this chapter.

[40 F.R. 25449, June 16, 1975.]

1905.14—ACTION ON APPLICATIONS

(a) Defective applications.

(1) If an application filed pursuant to § 1905.10(a), § 1905.11(a), § 1905.12(a), or § 1905.13 does not conform to the applicable section, the Assistant Secretary may deny the application.

(2) Prompt notice of the denial of an application shall be given to the applicant.

(3) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.

(4) A denial of an application pursuant to this paragraph shall be without prejudice to the filing of another application.

(b) Adequate applications.

(1) If an application has not been denied pursuant to paragraph (a) of this section, the Assistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of the filing of the application.

(2) A notice of the filing of an application shall include: (1) the terms, or an accurate summary, of the application; (ii) a reference to the section of the Act under which the application has been filed; (iii) an invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and (iv) information to affected employers, employees, and appropriate State authority having jurisdiction over employment or places of employment covered in the application of any right to request a hearing on the application.

(3) Where the requested variance, or any proposed modification or extension thereof, involves a Federal standard, or any portion thereof, identical to a State standard, or any portion thereof, as provided in §§ 1905.10(b)(11) and 1905.11 (b) (8) of this chapter, the Assistant Secretary will promptly furnish a copy of the application to the appropriate State authority and provide an opportunity for comment, including the opportunity to participate as a party, on the application by such authority, which shall be taken into consideration in determining the merits of the proposed action.

(4) A copy of each final decision of the Assistant Secretary with respect to an application filed under §§ 1905.10, 1905.11, or 1905.13 shall be furnished, within 10 days of issuance, the State authorities having jurisdiction over the employment or place of employment covered in the application.

[40 F.R. 25449, June 16, 1975.]

1905.15—REQUESTS FOR HEARINGS ON APPLICATIONS

(a) Request for hearing.

Within the time allowed by a notice of the filing of an application, any affected employer, employee, or appropriate State agency having jurisdiction over employment or places of employment covered in an application may file with the Assistant Secretary, in quadruplicate, a request for a hearing on the application.

[40 F.R. 25449, June 16, 1975.]

(b) Contents of a request for a hearing.

A request for a hearing filed pursuant to paragraph (a) of this section shall include:

(1) A concise statement of facts showing how the employer or employee would be affected by the relief applied for;

(2) A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and

(3) Any views or arguments on any issue of fact or law presented.

1905.16—CONSOLIDATION OF PROCEEDINGS

The Assistant Secretary on his own motion or that of any party may consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues.

SUBPART C—HEARINGS

1905.20—NOTICE OF HEARING

(a) Service.

Upon request for a hearing as provided in this part, or upon his own initiative, the Assistant Secretary shall serve, or cause to be served, a reasonable notice of hearing.

(b) Contents.

A notice of hearing served under paragraph (a) of this section shall include:

(1) The time, place, and nature of the hearing;

(2) The legal authority under which the hearing is to be held;

(3) A specification of issues of fact and law; and

(4) A designation of a hearing examiner appointed under 5 U.S.C. 3105 to preside over the hearing.

(c) Referral to hearing examiner.

A copy of a notice of hearing served pursuant to paragraph (a) of this section shall be referred to the hearing examiner designated therein, together with the original application and any written request for a hearing thereon filed pursuant to this part.

1905.21—MANNER OF SERVICE

Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

1905.22—HEARING EXAMINERS; POWERS AND DUTIES

(a) Powers.

A hearing examiner designated to preside over a hearing shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and receive relevant evidence;

(3) To provide for discovery and to determine its scope;

(4) To regulate the course of the hearing and the conduct of the parties and their counsel therein;

(5) To consider and rule upon procedural requests;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To make, or to cause to be made, an inspection of the employment or place of employment involved.

(8) To make decisions in accordance with the Act, this part, and the Administrative Procedure Act (5 U.S.C. Ch. 5); and

(9) To take any other appropriate action authorized by the Act, this part, or the Administrative Procedure Act.

(b) Private consultation.

Except to the extent required for the disposition of ex parte matters, a hearing examiner may not consult a person or a party on any fact at issue, unless upon notice and opportunity for all parties to participate.

(c) Disqualification.

(1) When a hearing examiner deems himself disqualified to preside over a particular hearing, he shall withdraw therefrom by notice on the record directed to the Chief Hearing Examiner.

(2) Any party who deems a hearing examiner for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file with the Chief Hearing Examiner of the Department of Labor a motion to disqualify and remove the hearing examiner, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Hearing Examiner shall rule upon the motion.

(d) Contumacious conduct; failure or refusal to appear or obey the rulings of a presiding hearing examiner.

(1) Contumacious conduct at any hearing before the hearing examiner shall be ground for exclusion from the hearing.

(2) If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the hearing examiner may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(e) Referral to Federal Rules of Civil Procedure.

On any procedural question not regulated by this part, the Act, or the Administrative Procedure Act, a hearing examiner shall be guided to the extent practicable by any pertinent provisions of the Federal Rules of Civil Procedure.

1905.23—PREHEARING CONFERENCES

(a) Convening a conference.

Upon his own motion or the motion of a party, the hearing examiner may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;

(3) Stipulations, admissions of fact, and of contents and authenticity of documents;

(4) Limitation of the number of parties and of expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding, and to assure a just conclusion thereof.

(b) Record of conference.

The hearing examiner shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

1905.24—CONSENT FINDINGS AND RULES OR ORDERS

(a) General.

At any time before the reception of evidence in any hearing, or during any hearing a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the presiding hearing examiner, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.

(b) Contents.

Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

(1) That the rule or order shall have the same force and effect as if made after a full hearing;

(2) That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;

(3) A waiver of any further procedural steps before the hearing examiner and the Assistant Secretary; and

(4) A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

(c) Submission.

On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the presiding hearing examiner for his consideration; or

(2) Inform the presiding hearing examiner that agreement cannot be reached.

(d) Disposition.

In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the presiding hearing examiner may accept such agreement by issuing his decision based upon the agreed findings.

1905.25—DISCOVERY

(a) Depositions.

(1) For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the presiding hearing examiner and having power to administer oaths.

(2) **Application**. Any party desiring to take the deposition of a witness may make application in writing to the presiding hearing examiner, setting forth:

(i) The reasons why such deposition should be taken;

(ii) The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;

(iii) The name and address of each witness; and

(iv) The subject matter concerning which each witness is expected to testify.

(3) **Notice.** Such notice as the presiding hearing examiner may order shall be given by the party taking the deposition to every other party.

(4) **Taking and receiving in evidence.** Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the presiding hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

(b) Other discovery.

Whenever appropriate to a just disposition of any issue in a hearing, the presiding hearing examiner may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

1905.26—HEARINGS

(a) Order of proceeding.

Except as may be ordered otherwise by the presiding hearing examiner, the party applicant for relief shall proceed first at a hearing.

(b) Burden of proof.

The party applicant shall have the burden of proof.

(c) Evidence.

(1) **Admissibility.** A party shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but a presiding hearing examiner shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(2) **Testimony of witnesses.** The testimony of a witness shall be upon oath or affirmation administered by the presiding hearing examiner.

(3) **Objections.** If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examination or cross-examination, or to the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the presiding hearing examiner may be relied upon subsequently in a proceeding.

(4) **Exceptions.** Formal exception to an adverse ruling is not required.

(d) Official notice.

Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided*, That the parties shall be given adequate notice, at the hearing or by reference in the presiding hearing examiner's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(e) Transcript.

Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.

1905.27—DECISIONS OF HEARING EXAMINERS

(a) Proposed findings of fact, conclusions, and rules or orders.

Within 10 days after receipt of notice that the transcript of the testimony has been filed or such additional time as the presiding hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties, and shall refer to all portions of the record and to all authorites relied upon in support of each proposal.

(b) Decision of the hearing examiner.

Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the presiding hearing examiner shall make and serve upon each party his decision, which shall become final upon the 20th day after service thereof, unless exceptions are filed thereto, as provided in § 1905.28. The decision of the hearing examiner shall include:

(1) A statement of findings and conclusions, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record, and

(2) The appropriate rule, order, relief, or denial thereof. The decision of the hearing examiner shall be based upon a consideration of the whole record and shall state all facts officially noticed and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

1905.28—EXCEPTIONS

Within 20 days after service of a decision of a presiding hearing examiner, any party may file with the hearing examiner written exceptions thereto with supporting reasons. Such exceptions shall refer to the specific findings of fact, conclusions of law, or terms of the rule or order excepted to, the specific pages of transcript relevant to the suggestions, and shall suggest corrected findings of fact, conclusions of law, or terms of the rule or order. Upon receipt of any exceptions, the hearing examiner shall fix a time for filing any objections to the exceptions and any supporting reasons.

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1905.29—TRANSMISSION OF RECORD

If exceptions are filed, the hearing examiner shall transmit the record of the proceeding to the Assistant Secretary for review. The record shall include: the application, any request for hearing thereon, motions and requests filed in written form, rulings thereon, the transcript of the testimony taken at the hearing, together with the exhibits admitted in evidence, any documents or papers filed in connection with prehearing conferences, such proposed findings of fact, conclusions of law, rules or orders, and supporting reasons, as may have been filed, the hearing examiner's decision, and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

1905.30—DECISION OF THE ASSISTANT SECRETARY

If exceptions to a decision of a hearing examiner are taken pursuant to § 1905.28, the Assistant Secretary shall upon consideration thereof, together with the record references and authorities cited in support thereof, and any objections to exceptions and supporting reasons, make his decision. The decision may affirm, modify, or set aside, in whole or part, the findings, conclusions, and the rule or order contained in the decision of the presiding hearing examiner, and shall include a statement of reasons or bases for the actions taken on each exception presented.

SUBPART D—SUMMARY DECISIONS

1905.40—MOTION FOR SUMMARY DECISION

(a) Any party may, at least 20 days before the date fixed for any hearing under Subpart C of this part, move with or without supporting affidavits for a summary decision in his favor on all or any part of the proceeding. Any other party may, within 10 days after service of the motion, serve opposing affidavits or countermove for summary decision. The presiding hearing examiner may, in his discretion, set the matter for argument and call for the submission of briefs.

(b) The filing of any documents under paragraph (a) of this section shall be with the hearing examiner, and copies of any such documents shall be served in accordance with § 1905.21.

(c) The hearing examiner may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. The hearing examiner may deny such motion whenever the moving party denies access to information by means of discovery to a party opposing the motion.

(d) Affidavits shall set forth such facts as would be admissible in evidence in a proceeding subject to 5 U.S.C. 556 and 557 and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his pleading; his response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(e) Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the hearing examiner may deny the motion for summary decision or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

(f) The denial of all or any part of a motion for summary decision by the hearing examiner shall not be subject to interlocutory appeal to the Assistant Secretary unless the hearing examiner certifies in writing (1) that the ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion, and (2) that an immediate appeal from the ruling may materially advance the ultimate termination of the proceeding. The allowance of such an interlocutory appeal shall not stay the proceeding before the hearing examiner unless the Assistant Secretary shall so order.

1905.41—SUMMARY DECISION

(a) No genuine issue of material fact.

(1) Where no genuine issue of a material fact is found to have been raised, the hearing examiner may issue an initial decision to become final 20 days after service thereof, unless, within such period of time any party has filed written exceptions to the decision. If any timely exception is filed, the hearing examiner shall fix a time for filing any objections to the exception and any supporting reasons. Thereafter, the Assistant Secretary, after consideration of the exceptions and any supporting briefs filed therewith and of any objections to the exceptions and any supporting reasons, may issue a final decision.

(2) An initial decision and a final decision made under this paragraph shall include a statement of—

(i) findings and conclusions, and the reasons or bases therefor, on all issues presented; and

(ii) the terms and conditions of the rule or order made.

(3) A copy of an initial decision and a final decision under this paragraph shall be served on each party.

(b) Hearings on issues of fact.

Where a genuine material question of fact is raised, the hearing examiner shall, and in any other case he may, set the case for an evidentiary hearing in accordance with Subpart C of this part.

SUBPART E—EFFECT OF INITIAL DECISIONS

1905.50—EFFECT OF APPEAL OF A HEARING EXAMINER'S DECISION

A hearing examiner's decision under this part shall not be operative pending a decision on appeal by the Assistant Secretary.

1905.51—FINALITY FOR PURPOSES OF JUDICIAL REVIEW

Only a decision by the Assistant Secretary shall be deemed final agency action for purposes of judicial review. A decision by a hearing examiner which becomes final for lack of appeal is not deemed final agency action for purposes of 5 U.S.C. 704.

1906—[RESERVED]

[46 F.R. 49544, October 6, 1981]

Pages 83 and 84 deleted

PART 1907

ACCREDITATION OF TESTING LABORATORIES

CRITERIA AND PROCEDURE FOR ACCREDITING TESTING LABORATORIES

SUBPART A—GENERAL

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1907.20 Granting of accreditation.
1907.30 Renewal of accreditation.
1907.35 Modification of accreditation.
1907.40 Revocation of accreditation.

AUTHORITY: Sec. 8, Pub. L. 91-596, 84 Stat. 1598 (29 U.S.C. 657); Sec. 107, Pub. L. 91-54, 83 Stat. 96 (40 U.S.C. 333); Secretary of Labor's Order No. 12-71, 36 F.R. 8754.

SOURCE: The provisions of this part 1907 appear at 38 F.R. 25150, September 11, 1973 unless otherwise noted.

SUBPART A—GENERAL

1907.1—PURPOSE AND SCOPE

(a) This part prescribes criteria and procedures for the accreditation of laboratories which test for safety specified products, devices, systems, materials, or installations.

(b) Any product, device, system, material, or installation which is accepted, or classified, or certified, or listed, or labeled, or otherwise determined to be safe by a testing laboratory at a time when it is duly accredited shall be deemed "approved" for the purpose of the relevant definitions in Parts 1910 and 1926 of this chapter.

1907.2—DEFINITIONS

(a) For purposes of this part, unless the context clearly requires otherwise:

(1) "Accepted" means inspected and found by an accredited testing laboratory to conform to applicable test standards;

(2) "Accredited" means accredited by the Occupational Safety and Health Administration, Department of Labor, in accordance with this part;

(3) "Accreditation" means a written recognition that a named testing laboratory complies with the criteria specified in this part;

(4) "Certified" means that a product

(i) either has been tested and found by an accredited testing laboratory to conform to applicable test standards, or to be safe for use in a specified manner, or

(ii) is of a kind items of which are periodically inspected by an accredited testing laboratory, and

(iii) in either case, bears a label, tag, or other record of certification;

(5) "Classified" means that a product has been tested, evaluated, and classified by an accredited testing laboratory with respect to a specific hazard, or limitation or condition of performance, and has affixed to it a controlled label, authorized by the laboratory, which indicates the nature of the coverage;

(6) "Labeled" means that a product has affixed to it a controlled label, symbol, or other certification mark of an accredited testing laboratory which makes periodic inspection of the production of the product and whose labeling indicates compliance with applicable test standards or tests to determine safe use in a specified manner;

(7) "Listed" means that a product is of a kind named in a list which

(i) is published by an accredited testing laboratory which makes periodic inspections of the production of that kind of product, and

(ii) states that samples of such products have been tested and found to conform to applicable test standards, and found to be safe for use in a specified manner;

(8) "Manufacturer" includes the person or organization that assembles or otherwise fabricates a product, and any other person or organization authorized to attach to a product his or its name, in lieu of a manufacturer's name or identifying mark;

(9) "OSHA" means Occupational Safety and Health Administration, U.S. Department of Labor;

(10) "Product" includes materials, devices, equipment, systems, installations, as well as completely assembled products;

(11) "To test" means to employ any means to determine compliance of a product with applicable test standards;

(12) "Test method" means the technical procedures and activities required in testing;

(13) "Test procedure" means a document which details the implementation of a test method; and

(14) "Test standard" means a document which specifies the performance and safety requirements for a product. Such requirements are utilized in the preparation of test procedures for testing a product. Some test standards prescribe test procedures.

SUBPART B—ACCREDITATION

1907.10—ACCREDITATION

OSHA shall accredit any laboratory which demonstrates that it satisfies all of the requirements of § 1907.11.

1907.11—CRITERIA OF ACCREDITATION

In order to be accredited, a testing laboratory must meet all the following conditions:

(a) General.

(1) The laboratory maintains good housekeeping practices. These practices are evident in office areas, test areas both inside and outside storage areas, and shipping and receiving areas.

(2) The laboratory maintains a current organization chart of the company, showing key personnel and the relationship between administration, operation, and quality control.

(3) The quality control structure and responsibilities of key personnel of the laboratory are described in a quality control manual(s). The manual is kept up-to-date and the procedures and requirements stated therein are complied with. The quality control manual(s) includes information with regard to receiving, handling, and shipping of products, testing procedures, calibration program, test reports, certifications, records and files, subcontracts, and the test standards files relating to areas of accreditation.

(b) Master file.

The laboratory maintains a master file containing all of the relevant primary OSHA standards and test standards applicable to the category of products for which the accreditation is sought. It contains information which provides a historical record of changes to these standards. A procedure is maintained to control the use of the master file and to insure that it is kept up-to-date.

(c) Receiving, handling and shipping controls.

Controls for receiving, handling, and shipping are in effect, and include procedures for:

(1) Visual examination of samples (upon receipt) for evidence of shipping damage;

(2) Periodic review of handling capabilities and maintenance of equipment;

(3) Storage of items while awaiting disposition with regard to the safety of personnel and degree of protection to preclude the possibility of damage; and

(4) Shipping and receiving data containing the date of receipt, name of manufacturer, and other necessary data to accurately record and positively identify samples as received at the laboratory.

(d) Test procedures.

(1) For each specified product to be tested, the laboratory uses written test procedures. These test procedures will be made available upon request to the Division of Safety Standards for examination and will serve as part of the laboratory evaluation by OSHA. The procedures shall be based on pertinent test standards such as those of American National Standards Institute (ANSI), National Fire Protection Association (NFPA), American Society for Testing and Materials (ASTM), Factory Mutual Research Corporation (FMRC) or Underwriters' Laboratories, Inc., and the specific test standard shall be identified in the application form for accreditation. Where no safety test standard exists, the laboratory shall prepare and submit both a written test standard and test procedure to the Division of Safety Standards for approval.

(2) Each test procedure includes the following information, when applicable:

(i) Nomenclature and identification of the test product;

(ii) Characteristics and design criteria to be inspected or tested, including values for acceptance or rejection;

(iii) Detailed steps and operations to be taken in sequence, including verifications to be made before proceeding;

(iv) A list of measuring equipment to be used, specifying range, type, accuracy, and test in which to be used.

(v) Layout and interconnection of test equipment and test items;

(vi) Hazardous situations or operations;

(vii) Precautions to comply with established laboratory safety requirements to ensure safety of personnel, and to prevent damage to test items and measuring equipment;

(viii) Environments and other conditions to be maintained, including tolerances;

(ix) Special instructions for inspection or testing (e.g. special handling of fragile test items);

(x) Special instructions for nonconformances, anomalous occurrences or results; and

(xi) Nomenclature and designation of applicable test standard on which the test procedure is based (for example: ANSI-A92.9-1969 or U.L. 408).

(e) Data sheet.

The laboratory maintains data sheets and test equipment lists for all inspections and tests performed, which are appropriate for the type and scope of inspection or test operation performed and sufficient in detail to provide for complete verification and evaluation of the operations and objectives. Data sheets include the following minimum information:

(1) Date of test, name of test and supervising engineer, nomenclature of test item and name of manufacturer;

(2) Unusual occurrences and results of each phase of testing thoroughly explained; and

(3) Signature of technician performing test.

(f) Test equipment lists.

A test equipment list is provided prior to the equipment utilized for that test. It includes the following information:

(1) The type and manufacturer of the equipment;

(2) The serial and/or model number of the equipment; and

(3) Date of last calibration.

(g) Calibration program.

The laboratory has established and utilizes a documented calibration program to assure the required degree of accuracy in measurements.

(1) The accuracy of all measurement instrument standards are traceable to primary standards maintained by the National Bureau of Standards of the United States of America or the national physical laboratory maintaining such standards in the country in which the laboratory is located. This traceability may be maintained through appropriate reference standards whose accuracy and stability have been certified by such agencies.

(2) The normal accuracy of the reference standard is at least four times as great as that of the instrument being calibrated. All equipment and reference standards are calibrated at least once a year, or in accordance with the instrument manufacturers' recommended schedules or the recommendations of the National Bureau of Standards.

(3) Documented evidence of calibrated standards and test equipment is maintained by the laboratory.

(i) If the laboratory utilizes an outside facility for calibration services, then the laboratory is responsible for the adequacy and quality of that service.

(ii) The laboratory maintains certifications with copies of calibration data and equipment lists.

(4) If equipment calibrations are performed in-house, the laboratory maintains written calibration procedures, and equipment folders containing routine maintenance information, values recorded during calibration, and standards equipment utilized for the calibration.

(5) Environmental factors critical to the calibration method are controlled during calibration processes and depend upon the physical property and degree of sensitivity of the instrument involved. The environmental factors may include temperature, humidity, cleanliness, vibration, voltage, radio frequency interference, and pressure. The requirement for these controlled environments are stated in each calibration procedure.

(6) The calibration program also contains written requirements and controls for permissible error limits, labeling and tagging of calibrated equipment, and state of the art measurements.

(h) Laboratory organization, independence and competence.

(1) The laboratory is legally constituted to perform testing and is independent of manufacturers and vendors in that:

(i) It has no managerial affiliation with producers, suppliers, or vendors;

(ii) It has a sufficient breadth of interest or activity, so that the loss or award of a specific contract to determine compliance of a product with the applicable test standard would not be a substantial factor in the financial well-being of the laboratory;

(iii) The employment security status of the personnel of the laboratory is free of influence or control of manufacturers, suppliers, and vendors; and

(iv) The laboratory is not engaged in promotion of the product.

(2) The laboratory can demonstrate to the OSHA representatives a level of competence and experience in the area of testing for which it is seeking accreditation or in a comparable test area, in the following manner:

(i) The technical director or the equivalent personnel of the laboratory, in conjunction with other personnel, is capable of orally presenting the laboratory's capabilities, and has a working knowledge of the applicable test standards and methods for approval of items for which the laboratory is seeking accreditation;

(ii) The laboratory can demonstrate that it is a working laboratory which has performed testing in the field of endeavor or in a comparable field of testing for which it is seeking accreditation; and

(iii) The laboratory is prepared to submit a minimum of three customer references and three test reports.

(3) The laboratory has an acceptable degree of financial security. This may be shown by means of a copy of its most recently audited financial statement, and a list of bank and credit references.

(4) The laboratory has the necessary test and inspection equipment to test the products for which it is seeking accreditation. If the laboratory utilizes a manufacturer's in-house laboratory or subcontracts for certain tests, it assumes the responsibility for the results of all testing.

(5) The laboratory maintains an adequate followup inspection system which includes means of inspecting and/or testing an appropriate sampling of a manufacturer's production at appropriate intervals (based on volume, complexity of manufacturing process, intended use, extent of field complaints, etc.) by factory inspections, field surveys, and other forms of audit procedures.

(i) Facilities and equipment.

The laboratory has available all facilities and test equipment relevant to the product for which accreditation is being requested. Such equipment and facilities are capable of uniformly producing and controlling all the test conditions specified in the applicable test standards. A list of such facilities and equipment is made available to the OSHA survey team, prior to the inspection of such facilities and equipment.

(j) Personnel.

(1) The laboratory is under the technical direction of a graduate, registered professional engineer or scientist, and is staffed by an adequate number of personnel qualified by training and experience to conduct tests and analyze data to assure the accuracy, performance, and timeliness of testing and followup inspections. The personnel has a working knowledge of the applicable test standards and test methods.

(2) There is a technical or scientific director (chief engineer) who is responsible for program schedules, manpower control and overall supervision of all test functions and personnel and who has at least a Bachelor of Science or equivalent college degree, and five (5) years of experience in fields which he directs, and is a registered professional engineer or scientist.

(3) There is a technical or scientific supervisor (department manager) who is responsible for the supervision and performance of engineers and technicians within a group, and the supervisory control of planning and testing within that group, and who has at least a Bachelor of Science or equivalent technical college degree, and two (2) years of experience in his field of responsibility.

(4) There is an engineering or scientific employee, who is responsible for the technical adequacy and quality of testing performed either by himself or under his supervision, and of the performance of technicians assigned to him, and who has at least a Bachelor of Science degree or equivalent technical college degree, and on-the-job training.

(5) There is a technical staff responsible for tasks assigned in the performance of test functions and/or for assistance to the engineering or scientific employee, who have at least a high school diploma or equivalent and on-the-job training or trade school training.

1907.12—CONDITIONS OF ACCREDITATION

The following conditions shall be part of every accreditation:

(a) Evidence of accreditation.

The accreditation of any testing laboratory shall be evidenced by a letter of accreditation from OSHA.

(b) Period of accreditation.

The accreditation of a testing laboratory shall be valid for a period of two years, unless terminated before or renewed after the expiration of the period. The period of validity shall be stated in the letter of accreditation.

(c) Maintenance of qualifying conditions.

Every accredited testing laboratory shall continue to satisfy all the conditions specified in § 1907.11 during the period of the accreditation.

(d) OSHA identification.

(1) The accredited laboratory shall require its OSHA identification to appear on every product which it has found to comply with the appropriate test standards. The OSHA identification shall be assigned by OSHA and shall include the laboratory's own distinctive label or trademark. It:

(i) Shall be coded or otherwise designed as to aid in detection of counterfeiting or other forms of misuse;

(ii) Shall not be readily transferable from one product to another;

(iii) Shall be directly applied to each unit of production in the form of labels or markings suitable for the environment and use of the product. If the physical size of a unit does not permit direct application, such a label or marking may be attached to the smallest package in which the unit is marketed;

(iv) Shall include either the proprietary name, certification mark, or registered trademark of the laboratory; and

(v) Shall include the name of the product classification, where this is not completely obvious.

(2) Determination of noncompliance or revocation of authority to use the OSHA identification mark for a product shall be the responsibility of the accredited laboratory. Such actions shall not prejudice resubmission of the product after deficiencies have been corrected. If the manufacturer defaults in its obligations with respect to its approved products, the laboratory may, at its discretion, terminate its approval by written notice to the manufacturer and to OSHA.

(3) The laboratory shall establish and implement appropriate procedures to prevent the misuse of its OSHA identification mark, including procedures for:

(i) Removal of the OSHA identification mark from a product found at the factory not to comply;

(ii) Recall of nonconforming products, with notice of the recall to OSHA, the manufacturer of the affected product, and the public; and

(iii) Return of separable OSHA identification marks or labels, and confirmation of obliteration or destruction of other means of directly applying the identification mark, when approval of a product is withdrawn or discontinued.

(e) Product acceptance.

(1) A test report shall be made to OSHA by the accredited laboratory for each submission of a product that has been tested and found to comply with applicable test standards. The test report shall be signed by an authorized representative of the laboratory, who is technically competent, responsible for the quality and accuracy of the work, and whose credentials have been previously presented to OSHA.

(i) A copy of the report shall also be forwarded to the manufacturer to serve as notification that the product complies with the applicable test standards.

(ii) The laboratory shall retain a copy of the report on file with the data accumulated during the actual testing for at least five (5) years.

(iii) The test report shall:

(a) Specify the catalog or model numbers covered by the test investigation;

(b) Specify the differences in various models;

(c) Report the results of all tests performed;

(d) Incorporate a signed statement that the product covered by the test report complies with the applicable test standards; and

(e) Include a copy of the test procedure.

(2) A list of all products which have been approved by an accredited laboratory shall be published by that laboratory, and a copy forwarded to OSHA, on at least a quarterly basis, and shall be consolidated on an annual basis.

(3) The laboratory shall perform followup testing or inspection of the production of products which it has approved. Contractual arrangements regarding these services shall be between the laboratory and the manufacturer and shall limit the application of the OSHA identification mark only to those products which are in compliance with the applicable test standards. As part of the followup procedures, the laboratory shall:

(i) Conduct market surveys to countercheck approved products;

(ii) Investigate alleged field failures of approved products to assess adequacy of safety test standards, acceptance testing, and continuing product compliance;

(iii) Select and evaluate production samples of the products to confirm validity of prototype testing before issuances of approval notice;

(iv) Conduct a production compliance inspection of products of a manufacturer being approved for the first time, before authorizing release of products bearing the OSHA identification mark; and

(v) File a followup report to OSHA. Such a report shall be deemed a test report within the meaning of paragraph (e)(1) of this section.

(4) Authorization to apply the OSHA identification mark to approved products shall be the function of the accredited laboratory. Testing of the product, inspection at place of manufacture, observation of, or participation in, in-house testing, consulting, and any other procedures necessary shall be employed by the accredited laboratory to assure that the products comply with appropriate test standards.

(f) Recordkeeping.

(1) The accredited laboratory shall maintain the following records:

(i) Test reports on all products tested;

(ii) All data generated during testing;

(iii) Records supporting compliance with calibration program;

(iv) Equipment lists;

(v) Receiving and shipping records;

(vi) OSHA accreditation correspondence (application, letter of accreditation, etc.);

(vii) Organization chart and personnel files, including list of all personnel job responsibility description and job training program;

(viii) Financial records;

(ix) Quality control manual(s); and

(x) A master file containing all the OSHA regulations and standards referenced therein which are applicable to the product for which accreditation has been granted.

(2) The minimum period of retention for the records shall be five (5) years, except that shipping and receiving records need be kept only for a minimum of one (1) year.

(g) Reports.

(1) The accredited laboratory shall furnish OSHA an annual report detailing the extent of its activities for the year, and covering the products which it has approved during the year. The report shall include information concerning:

(i) The number of factory inspections;

(ii) Field surveys;

(iii) Laboratory check tests;

(iv) Extent of examination or testing of products;

(v) Calibration program;

(vi) List of approved products;

(vii) List of recalled products; and

(viii) Extent of audit of manufacturer's quality control procedures.

(2) The accredited laboratory shall also furnish OSHA a quarterly report which shall include the following:

(i) List of approved products.

(ii) List of recalled products.

(h) Inspection of laboratories.

(1) The accredited testing laboratory shall grant OSHA the right to conduct unscheduled inspections of the laboratory in order to assure continued compliance with the requirements for accreditation, and shall cooperate in the conduct of the inspections.

(2) The laboratory upon request by OSHA shall verify, at its expense, any data which it has generated.

(3) In order to compare and verify various testing techniques and interpretation of requirements, an accredited laboratory shall, at its own expense, participate in periodic reference sample test programs under the direction of OSHA.

(i) Other conditions.

The accredited testing laboratory shall comply with any other term or condition stated in its letter of accreditation.

SUBPART C—PROCEDURES FOR GRANTING, REVIEWING, MODIFYING, OR TERMINATING ACCREDITATIONS

1907.20—GRANTING OF ACCREDITATION

(a) Applications.

Any testing laboratory seeking accreditation may file an application therefor with the Division of Safety Standards, Office of Standards, OSHA, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, D.C. 20210. The application for accreditation must be made on appropriate forms available at the Division of Safety Standards.

(b) Action on applications.

(1) Defective application. If an application for accreditation does not contain sufficient information with regard to all the criteria of accreditation the Division of Safety Standards may deny the application. Notice of a denial shall be given to the applicant and shall state all the deficiencies of the application. A denial of an application shall be without prejudice to the submission of a new or amended application.

(2) Adequate applications. If an application is not denied pursuant to paragraph (b)(1) of this section the Division shall acknowledge the receipt of the application and shall make arrangements for an onsite survey of the applicant's laboratory facilities at a mutually agreeable time.

(3) Onsite survey. The Division of Safety Standards shall perform an onsite survey of the applicant's laboratory facilities for the purpose of verifying the representations of the application concerning the criteria of accreditation. The Division shall make a complete written report of the survey and shall maintain it in an appropriate file containing the application, the report and any other writing concerning the application.

(4) Decision.

(i) If the Division of Safety Standards is persuaded that the applicant satisfies all the criteria of accreditation it shall send to the applicant a letter of accreditation. The applicant shall keep the letter with the other records required by § 1907.12(f).

(ii) If the Division is not persuaded that the applicant satisfies all the criteria of accreditation it shall give the applicant written notice of a proposal to deny the application. The notice shall contain a statement of all the reasons for the proposed denial and shall notify the applicant that:

(a) The proposal to deny the application is based on the information in the relative application file;

(b) All the papers in the file are available to the applicant for inspection and copying;

(c) The applicant may contest the Division's reasons for the proposed denial, by giving to the Division prompt notice of its contentions;

(d) The applicant may request an opportunity to submit oral or written evidence in support of its contentions, and also to conduct such cross-examination as may be necessary for a full and true disclosure of the relevant facts; and that

(e) The application will be deemed denied, on a stated date, unless, prior to that date, the Division receives a notice of contest.

(iii) If a proposal to deny an application is contested, the Division shall make the arrangements necessary to disclose to the applicant all the facts and arguments on which the proposed denial of the application is based and to afford the applicant a full opportunity to refute those facts and arguments and to present evidence in support of its own contentions. To the maximum extent consistent with fairness the disclosures by the Division and the refutations and presentations of a contesting applicant shall be in written form and shall be made part of the application file. Any oral examination and cross-examination shall be recorded and made part of the application file.

(iv) The Division shall make a decision on the application and give notice of it to the applicant. The decision shall include a statement of findings and conclusions and the basis therefor on all the material issues presented. Findings and conclusions on issues of fact must be based solely on the evidence in the application file.

(5) **Review.** An applicant aggrieved by a decision of the Division of Safety Standards may obtain review of the decision by filing a written application for review with the Administrator of OSHA within 20 days of receipt of the notice of the decision. The review shall be on the basis of the application file. The Administrator may affirm, modify, or reverse the decision of the Division or remand it to the Division for further proceedings.

1907.30—RENEWAL OF ACCREDITATION

(a) Applications.

An accredited testing laboratory may renew its accreditation by filing with the Division of Safety Standards a completed renewal form, not less than 30, nor more than 60, days before the expiration date of its current accreditation.

(b) Effect of application.

When an accredited testing laboratory has filed a timely and sufficient renewal form, its current accreditation does not expire until the renewal application has been finally determined.

(c) Action on applications.

An application for renewal of accreditation may be granted only if the Division of Safety Standards is persuaded that the applicant continues to satisfy all the criteria of accreditation set forth in § 1907.11. As far as practicable, an application for renewal of accreditation shall be processed in accordance with § 1907.20 except that the Division may waive its right to conduct an onsite survey.

1907.35—MODIFICATION OF ACCREDITATION

(a) Termination or limitation of accreditation.

An accredited testing laboratory may voluntarily terminate its accreditation, either in its entirety or with respect to some of the products covered by the accreditation, by giving written notice of its intent to the Division of Safety Standards. The notice shall state the date as of which the termination is to take effect. As of the effective date of the termination, the laboratory may no longer use, nor authorize the use of, its OSHA identification labels or markings for the products involved.

(b) Enlargement of accreditation.

An accredited testing laboratory may apply to the Division of Safety Standards for an enlargement of its current accreditation to cover additional products. The application shall be processed and acted on in accordance with the applicable provisions of § 1907.20, except that the Division may waive the right to conduct an onsite survey.

1907.40—REVOCATION OF ACCREDITATION

(a) Grounds for revocation.

The Division of Safety Standards may revoke an accreditation in case of (1) material misrepresentation in the application for the accreditation or its enlargement, or its renewal, or (2) failure to comply with a condition of the accreditation.

(b) Procedure for revocation.

(1) Except in cases of willfulness or those in which the safety of employees requires otherwise, no accreditation may be suspended or revoked unless before the institution of revocation proceeding the accredited laboratory has been given (1) written notice by the Division of Safety Standards of the facts or conduct which are believed to warrant the revocation or suspension, and (2) a reasonable opportunity to demonstrate or achieve compliance with the applicable requirements.

(2) The procedure for suspension or revocation of an accreditation shall conform, to the extent practicable, to the procedure for accreditation prescribed in § 1907.20(b)(4) and (5).

PART 1908

ON-SITE CONSULTATION AGREEMENTS

1908.1 Purpose and scope.
1908.2 Definitions.
1908.3 Eligibility and funding.
1908.4 Requests and scheduling.
1908.5 Conduct of a visit.
1908.6 Relationship to enforcement.
1908.7 Consultant specifications.
1908.8 Monitoring and evaluation.
1908.9 Agreements.
1908.10 Exclusions.

AUTHORITY: Secs. 7(c) (1), 21(c), 84 Stat. 1598, 1612; (29 U.S.C. 656(c) (1), 670(c)).

SOURCE: The provisions of this Part 1908 appear at 42 F.R. 41389, August 16, 1977 unless otherwise noted.

1908.1 PURPOSE AND SCOPE

This part contains requirements for agreements between States and the Federal Occupational Safety and Health Administration (hereinafter referred to as the Agency under Sections 7(c) (1) and 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) under which the Agency will utilize State personnel to provide on-site consultation services to employers. The service will be made available at no cost to employers to assist them in providing their employees employment and a place of employment which is safe and healthful. Consultants will identify specific hazards in the workplace and provide advice on their elimination. Although on-site consultation will be conducted independent of any OSHA enforcement activity, and the discovery of hazards will not mandate citation or penalties, the employer remains under a statutory obligation to protect his employees, and, in certain instances, will be required to take necessary protective action. States entering into agreements under this Part will receive ninety percent Federal reimbursement for allowable costs and will provide on-site consultation for employers requesting the service, subject to scheduling priorities and available resources, and will offer advice and technical assistance to each requesting employer on job-related safety and health hazards.

1908.2 DEFINITIONS

As used in this part:

"Act" means the Federal Occupational Safety and Health Act of 1970.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

"Compliance officer" means a Federal or State compliance safety and health officer.

"Employer" means a person engaged in a business, who has employees, but does not include the United States, or any State or political subdivision of a State.

"On-site consultation" means all activities related to the conduct of an on-site consultative visit, including a written report to the employer.

"OSHA" means the Federal Occupational Safety and Health Administration or the State agency responsible under a Plan approved under Section 18 of the Act for the enforcement of occupational safety and health standards in that State.

"State" includes a State of United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

"RA" means the Regional Administrator for Occupational Safety and Health of the Region in which the State concerned is located, or his designee.

1908.3 ELIGIBILITY AND FUNDING

(a) State eligibility

(1) Any State may enter into an agreement with the Assistant Secretary to perform on-site consultation for private-sector employers.

(2) A State having a Plan approved under Section 18 is eligible to participate in the program if that Plan does not include provisions for federally-funded on-site consultation to private-sector employers.

(b) Reimbursement

(1) The Assistant Secretary will reimburse 90 percent of the costs incurred under an agreement entered into pursuant to this part. Agreements negotiated within 30 days of the effective date of these revisions will be reimbursed at the level of ninety percent for allowable costs incurred as of that date. Approved training and specified out-of-State travel will be fully reimbursed.

(2) Reimbursement to States under this Part is limited to costs incurred in providing on-site consultation to private-sector employers only.

(i) In all States with Plans approved under Section 18, on-site consultation provided to State and local governments, as well as the remaining range of voluntary compliance activities referred to in 29 CFR 1902.4(c) (2) (xiii), will not be affected by the provisions of this part, with Federal reimbursement for these activities in accordance with the provisions of Section 23(g) of the Act.

(ii) In states without Plans approved under Section 18, no Federal reimbursement for on-site consultation, provided to State and local governments will be allowed, although this activity may be conducted independently by a State with 100 percent State funding.

1908.4 REQUESTS AND SCHEDULING

(a) Encouraging requests.

(1) State responsibility. The State shall be responsible for encouraging employers to request on-site consultative visits, and shall publicize the availability of its on-site consultation service and the scope of the service which will be provided. The Assistant Secretary may also engage in activities to publicize and promote the program.

(2) Promotional methods. To inform employers of the availability of its on-site consultation service and to encourage requests, the State may use methods such as the following:

(i) Paid newspaper advertisements;

(ii) Newspaper, magazine, and trade publication articles;

(iii) Special direct mailings or telephone solicitations to establishments, based on Workers' Compensation data or other appropriate listings;

(iv) In-person visits to workplaces to explain the availability of the service, and participation at employer conferences and seminars;

(v) Solicitation of support from State business and labor organizations and leaders, and public officials;

(vi) Preparation and dissemination of publications, descriptive materials, etc., on on-site consultation services;

(vii) Free public service announcements on radio and television.

(3) Scope of service. In its publicity for the program, in response to any inquiry, and before an employer's request for a consultation visit may be accepted, the state shall clearly explain that the service is provided at no cost to an employer through federal and state funds for the purpose of providing the employer with a better understanding of the requirements of the applicable State or Federal law and regulations. The State shall explain that while utilzing this service, an employer remains under a statutory obligation to provide safe and healthful working conditions for employees. In addition, while the identification of hazards by a consultant will not mandate the issuance of citations or penalties, the employer is required to take action necessary to eliminate a hazard which in the judgment of the consultant, represents an imminent danger to employees, or which would be classified as a serious violation. The State shall emphasize, however, that the discovery of such a hazard will not initiate any enforcement activity, and that referral will not take place unless the employer fails to cooperate in the elimination of the identified hazard.

(b) Employer requests.

(1) An on-site consultative visit will be provided only at the request of the employer, and shall not result from the enforcement of any right of entry under State law. A consultant is not authorized to make an unscheduled appearance at the workplace of an employer who has not made a request to conduct an on-site consultative visit at that time.

(2) When making the request, the employer shall describe those specific working conditions, hazards or situations for which on-site consultation is desired; the smaller the employer's business, the less specific the request must be.

(3) Employers may request on-site consultation to assist in the abatement of hazards cited during an OSHA enforcement inspection. However, an on-site consultation visit may not take place after an OSHA inspection until the employer has been notified that no citation will be issued or, if a citation is issued, until those citation items for which consultation is requested have become final orders.

(c) Scheduling priority.

Priority shall be assigned to requests from smaller businesses, based on their number of employees, with emphasis on those work places of highly hazardous nature.

1908.5 CONDUCT OF A VISIT

(a) Preparation.

An on-site consultative visit shall be made only after appropriate preparation by the consultant. Prior to the visit, the consultant shall become familiar with as many factors concerning the establishment's operation as possible. The consultant shall review all applicable codes and standards. In addition, the consultant shall assure that all necessary technical and personal protective equipment is available and functioning properly.

(b) Structured format.

An on-site consultative visit shall follow a structured format, which will consist of an opening conference, a walk through the workplace, and a closing conference. The visit shall be followed by a written report to the employer.

(c) Employee participation.

(1) The consultant shall retain the right to confer with individual employees during the course of the visit in order to identify and judge the nature and extent of particular hazards. The consultant shall explain the necessity for this contact to the employer during the opening conference, and an employer must agree to this contact before a visit can proceed.

(2) In addition, employees, their representatives, and members of a workplace joint safety and health committee, may participate in the on-site consultative visit, to the extent desired by the employer. In the opening conference, the consultant shall encourage the employer to allow employee participation to the fullest extent practicable.

(d) Opening conference.

In addition to the requirements of § 1908.5(c), the consultant shall, in the opening conference, explain to the employer the relationship between on-site consultation and OSHA enforcement activity and shall explain the obligation to protect employees in the event that certain hazardous conditions are identified.

(e) On-site activity.

(1) Activity during the on-site consultative visit will be focused primarily on those conditions, hazards or situations described by the employer when the request was made.

(2) The consultant shall advise the employer as to the employer's obligations and responsibilities under applicable Federal or State law and implementing regulations.

(3) To the extent of their capability and training, consultants shall identify and provide advice on elimination of those hazards included in the employer's request and any other safety or health hazards observed in the workplace during the course of the on-site consultative visit. The consultant shall conduct sampling and testing, with subsequent analyses, as may be necessary to confirm the existence of health hazard.

(4) Advice and technical assistance on the elimination of identified safety and health hazards may be provided to employers during and after the on-site consultative visit. Descriptive materials may be provided on approaches, means, techniques, etc., commonly ultilized for the elimination or control of such hazards. This advice should include basic information indicating the possibility of a solution and describing the general form of this solution. However, the advice and assistance shall not include engineering services or the provision of engineering design solutions. The consultants shall also advise the employers of additional sources of assistance, if known.

(5) When a hazard is identified in the workplace, the consultant shall indicate to the employer his or her best judgement as to whether this situation would be classified as a "serious" or "other-than-serious" violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA Field Operations Manual. (The element of employer knowledge shall not be considered.)

(6) At the time that the consultant determines that an identified hazard which would be classified as a serious violation, the consultant and the employer shall develop a specific plan to eliminate the hazard, affording the employer a reasonable period of time to complete the necessary action. If, within 10 days of the development of this plan, an employer, in good faith, disagrees with the period of time established for the elimination of a hazard, the State shall provide an opportunity for an expeditious informal discussion with the State consultation manager on the time period set by the consultant.

(f) Employer obligations.

(1) An employer must take immediate actions to eliminate employee exposure to a hazard which, in the judgment of the consultant, presents an imminent danger to employees. If the employer fails to take the necessary action, the consultant must immediately notify the affected employees and the appropriate OSHA enforcement authority and provide the relevant information.

(2) An employer must also take the necessary action in accordance with the plan developed under § 1908.5(e) (6) to eliminate employee exposure to any identified hazard which, in the judgment of the consultant, would be classified as a serious violation. In order to demonstrate that the necessary action is being taken, an employer may be required to submit periodic reports, permit a follow-up visit, or take similar action. If the employer fails to take the action necessary to eliminate a hazard which would be classified as a serious violation, the consultant shall immediately notify the appropriate OSHA enforcement authority and provide the relevant information. The OSHA enforcement authority will make a determination, based on review of the facts, whether enforcement activity is warranted.

(g) Written report.

A written report shall be prepared for each visit and sent to the employer. The timing and format for the report shall be approved by the Assistant Secretary. The report shall restate the employer's request and describe the working conditions examined by the consultant; shall identify specific hazards; shall describe their nature, including reference to applicable standards or codes; shall identify the seriousness of the hazard; and, to the extent possible, shall include suggested means or approaches to their elimination or control. Additional sources of assistance should also be indicated, if known, including the possible need to procure specific engineering consultation, medical advice and assistance, etc. The report shall also include references to the completion dates for the situations described in §§ 1908.4(e) (5), (6).

(h) Confidentiality.

The consultant shall preserve the confidentiality of information obtained as the result of an on-site consultative visit which contains or might reveal a trade secret of the employer.

1908.6 RELATIONSHIP TO ENFORCEMENT

(a) Independence.

(1) On-site consultation activity by a State shall be conducted independently of any Federal or State OSHA enforcement activity.

(2) The consultation activity shall have its own identifiable managerial staff. In States with Plans approved under Section 18, this staff will be separate from the managing compliance inspections and scheduling.

(3) The identity of employers requesting on-site consultation as well as the file of the consultant's visit shall not be forwarded or provided to OSHA for use in any compliance inspection or scheduling activities.

(4) Employers receiving on-site consultative visits shall not be identified to OSHA, unless the employer fails to take the necessary action to protect employees from a hazard considered by the consultant to be an imminent danger or serious violation.

(b) Effect on scheduling.

(1) An on-site consultative visit already in progress will have priority over OSHA compliance inspections except as provided in 1908.5(b) (2). The consultant and the employer shall notify the compliance officer of the visit in progress and request delay of the inspection until after the visit is completed. A request for on-site consultation shall not be the basis for the delay of a compliance inspection.

(2) The consultant shall terminate an on-site consultative visit already in progress where one of the following kinds of OSHA compliance inspections is about to take place:

(i) Imminent danger investigations.

(ii) Fatality/catastrophe investigations.

(iii) Complaint investigations.

(iv) Follow-up inspections.

(v) Other critical inspections as determined by the Assistant Secretary.

(3) An on-site consultation visit shall not take place subsequent to an OSHA enforcment inspection until the employer has been notified that no citation will be issued, or if a citation is issued, on-site consultation shall only take place with regard to those citation items which have become final orders.

(c) Effect upon enforcment.

(1) The advice of the consultant and the consultant's written report will not be binding on a compliance officer in a subsequent enforcement inspection. In a subsequent inspection, a compliance officer is not precluded from finding hazardous conditions, or violations of standards, rules or regulations, for which citations would be issued and penalties proposed.

(2) The hazard identification and abatement advice given by a State consultant, or the failure of a consultant to point out a specific hazard, or other possible errors or omissions by the consultant shall not be binding upon a compliance officer, and will not affect the regular conduct of a compliance inspection, or preclude the finding of alleged violations and the issuance of citations, or act as a defense to any enforcement action.

(3) In the event of a subsequent inspection, the employer is not required to either inform the compliance officer of the prior visit or provide a copy of the State consultant's written report to the compliance officer.

(4) If, however, the employer chooses to provide a copy of the consultant's report to a compliance officer, it may be used to determine the employer's good faith for purposes of proposing penalties.

1908.7 CONSULTANT SPECIFICATIONS

(a) Number.

(1) The number of consultant positions which will be funded under an agreement pursuant to this Part for the purpose of providing on-site consultation to private sector employers will be determined by the Assistant Secretary on the basis of program performance, demand for services, resources available, and the recommendation of the RA, and may be adjusted periodically.

(2) For a period of one year from the effective date of this revision, the number of on-site consultant positions funded in a state which does not have an agreement under this Part as of the effective date of these revisions shall not exceed 25 percent of the number of fulltime Federal and State compliance officer positions present within that State. The number of "compliance officer positions present" shall be the number of allocated Federal compliance officer positions for that State and, if the State has an approved Plan under Section 18, the number of compliance officer positions provided in the State's 23(g) grant. The Assistant Secretary may exempt a State from this limitation if it is determined that this exemption is warranted and consistent with available resources.

(3) States shall make efforts to utilize consultants with the safety and health expertise necessary to properly meet the demand for consultation by the various industries within a State. The RA will determine and negotiate a reasonable balance with the State on an annual basis.

(b) Qualifications.

(1) All consultants utilized under agreements pursuant to this Part shall be employees of the State, qualified under State requirements for employment in occupational safety and health. They must demonstrate adequate education and experience to satisfy the RA, before assignment to work under an agreement, and annually thereafter, that they meet the requirements set out in § 1908.6(b)(2) and that they have the ability to perform satisfactorily pursuant to the agreement. All consultants shall be selected in accordance with the provisions of Executive Order 11246 of September 24, 1965, as amended, entitled "Equal Employment Opportunity."

(2) Minimum requirements shall include:

(i) Consultants shall demonstrate the following: the ability to identify hazards; the ability to assess employee exposure and risk; knowledge of OSHA standards; knowledge of abatement techniques and practices; knowledge of workplace safety and health program requirements; and the ability to effectively communicate, both orally and in writing.

(ii) Consultants shall meet any additional degree and/or experience requirements as may be established by the Assistant Secretary.

(3) A specific plan to upgrade the qualifications for all State consultants shall be developed by each participating State according to guidelines established by the Assistant Secretary.

(i) The plan shall include a timetable with final implementation dates for specific actions which the State shall take in order to upgrade the education and experience of State consultants, including revision of job descriptions, establishment of additional qualifications and training and increases in State salary levels.

(ii) The plan must be submitted to the RA within 120 days of the effective date of an agreement under this Part and shall be revised annually to reflect the State's progress toward specific goals.

(iii) The implementation dates in initial plans shall be no later than August 1, 1980.

(c) Training.

As necessary, the Assistant Secretary will specify immediate and continuing training requirements for consultants. Expenses for training which is required by the Assistant Secretary or approved by the RA will be reimbursed in full.

1908.8 MONITORING AND EVALUATION

(a) Regional administrator responsibility.

A State's performance under the agreement will be regularly monitored and evaluated by the RA. The RA may direct changes as a result of these evaluations to foster conformance with consultation policy as established by the Assistant Secretary. All aspects of the agreement with the State will be continually monitored and evaluated as part of a systematic Federal regional plan for this activity.

(b) State performance.

The RA or his designee will periodically meet with State project officials to assess project status and to seek resolution to any operating problems. An appropriate number of State files (without identification of the employer) on individual on-site consultative visits be audited. Special attention will be given to determine whether the provisions of §§ 1908.5 (e) and (f) are being followed. A written report of these periodic reviews will be forwarded by the RA to the State.

(c) Consultant performance.

(1) State activity. The State shall establish and maintain an organized consultant performance monitoring system under the agreement:

(i) The system shall be established within 60 days of the execution of the contract, or within 60 days from the date the Assistant Secretary publishes a program directive on the design of the performance monitoring system. Whichever occurs later. Operation of the system shall conform to all requirements established by the Assistant Secretary. The system shall be approved by the RA before it is placed in operation.

(ii) A performance evaluation of each individual State consultant performing on-site consultation for employers shall be prepared annually. All aspects of a consultant's performance shall be reviewed at that time. Recommendation for remedial action shall be made and acted upon. The annual evaluation report shall be a confidential State personnel record and may be timed to coincide with regular personnel evaluations.

(iii) Performance of individual consultants shall be measured in terms of their ability to identify hazards in the workplaces which they have visited; their ability to determine employee exposure and risk, and in particular their performance under §§ 1908.5 (e) and (f); their knowledge and application of applicable Federal or State statutes, regulations or standards; their knowledge and application of appropriate abatement techniques and approaches; and their ability to effectively communicate their findings to employers.

(iv) Accompanied visits to observe consultants during on-site consultative visits shall be conducted at least semi-annually for each consultant. The State may also conduct unaccompanied visits to workplaces which received on-site consultation, for the purpose of evaluating consultants. A written report of each visit shall be provided to the consultant. These visits shall be conducted only with the expressed permission of the employer who requested the on-site consultative visit.

(v) The State will report quarterly to the RA on system operations, including copies of accompanied visit reports (without identification of the employer) completed that quarter.

(2) Federal activity. State consultant performance monitoring as set out in § 1908.7(c) (1) shall not preclude Federal monitoring activity by methods determined to be appropriate by the Assistant Secretary.

(d) State reporting.

For Federal monitoring and evaluation purposes, the State shall compile and submit such factual and statistical data in the format and at the frequency required by the Assistant Secretary. The State shall prepare and submit to the RA any narrative reports, including copies of written reports to employers (without identification of the employer) as may be required by the Assistant Secretary.

1908.9 AGREEMENTS

(a) Who may make agreements.

The Assistant Secretary may make an agreement under this part with the Governor of a State or with any State agency designated for that purpose by the Governor.

(b) Negotiations.

(1) Procedures for negotiations may be obtained through the RA who will negotiate for the Assistant Secretary and make final recommendations on each agreement to the Assistant Secretary.

(2) States with Plans approved under Section 18 may initiate negotiations in anticipation of the withdrawal of federally funded on-site consultation services to private-sector employers from the Plan.

(3) Renegotiation of existing agreements funded under this Part shall be initiated within 30 days of the effective date of these revisions.

(c) Contents of agreement.

(1) Any agreement and subsequent modifications shall be in writing and signed by both parties.

(2) Each agreement shall provide that the State will conform its operations under the agreement to:

(i) The requirements contained in this Part 1908;

(ii) All related formal directives subsequently issued by the Assistant Secretary implementing this regulation.

(3) Each agreement shall contain an explicit written commitment for each major lettered paragraph in §§ 1908.4, 1908.5, 1908.6, 1908.7, and 1908.8, with particular emphasis placed on the following elements:

(i) Consultation management structure separate from enforcement;

(ii) Consultant numerical limitation and safety and health objective;

(iii) Assignment of qualified personnel;

(iv) Submission of a plan for upgrading consultant qualifications.

(v) Advertisement of consultation services;

(vi) Early notification to employers of the scope of services provided and their obligations;

(vii) Employee participation in on-site visits;

(viii) Employee protection requirements;

(ix) Provision of written report to employers; and

(x) Monitoring and evaluations procedures;

(4) Each agreement shall also include a budget of the State's anticipated expenditures under the agreement, in the detail and format required by the Assistant Secretary.

(d) Location of sample agreement.

A sample agreement is available for inspection at all Regional Offices of the Occupational Safety and Health Administration of the U.S. Department of Labor.

(e) Action upon requests.

The State will be notified within a reasonable time of any decision concerning its request for an agreement. If a request is denied, the State will be informed in writing of the reasons supporting the decision. If an agreement is negotiated, the initial funding will specify the period for the agreement. Additional funds may be added at a later time provided the activity is satisfactorily carried out and appropriations are available. The State may also be required to amend the agreement for continued support.

(f) Termination.

Either party may terminate an agreement under this part upon 30 days written notice to the other party.

1908.10 EXCLUSIONS

An agreement under this part will not restrict in any manner the authority and responsibility of the Assistant Secretary under Sections 8, 9, 10, 13, and 17 of the Act, or any corresponding State authority.

PART 1911

RULES OF PROCEDURE FOR PROMULGATING, MODIFYING, OR REVOKING OCCUPATIONAL SAFETY OR HEALTH STANDARDS

1911.1 Purpose and scope.
1911.2 Definitions.
1911.3 Petition for the promulgation, modification, or revocation of a standard.
1911.4 Additional or alternative procedural requirements.
1911.5 Minor changes in standards.

COMMENCEMENT OF RULEMAKING

1911.10 Construction standards.
1911.11 Other standards.
1911.12 Emergency standards.

HEARINGS

1911.15 Notice of hearing.
1911.16 Powers of presiding officer.
1911.17 Certification of the record of a hearing.
1911.18 Decision.

AUTHORITY: The provisions of this Part 1911 issued under secs. 6(b), 8(g), 84 Stat. 1593, 1600; 29 U.S.C. 655, 657; secs. 1, 4, 49 Stat. 1036, 1038, as amended; 41 U.S.C. 35, 38; secs. 2, 4, 74 Stat. 1034, 1035; 41 U.S.C. 351, 353; sec. 107, 76 Stat. 357; 40 U.S.C. 333; sec. 41, 44 Stat. 1444; 33 U.S.C. 941; sec. 5(j)(2), 79 Stat. 848; 20 U.S.C. 954(j)(2).

SOURCE: The provisions of this Part 1911 appear at 36 F.R. 17507, Sept. 1, 1971, unless otherwise noted.

1911.1—PURPOSE AND SCOPE

This part sets forth rules of procedure for promulgating, modifying, or revoking occupational safety or health standards under section 6(b) (1), (2), (3), and (4) of the Williams-Steiger Occupational Safety and Health Act of 1970 and under any of the particular statutes listed in § 1911.2(d) which may also cover the employments affected by the standards. The purpose of the rules is to provide for single proceedings in the setting of standards under the several statutes, in order to assure uniformity of the standards to be enforced under the several statutes and in order to avoid needless multiplicity of rulemaking proceedings dealing with the same subjects and issues relating to occupational safety and health standards.

1911.2—DEFINITIONS

As used in this part, unless the context clearly requires otherwise—

(a) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

(b) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590; 29 U.S.C. 650).

(c) "Standard" means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment, and which is to be promulgated, modified, or revoked in accordance with section 6(b) (1), (2), (3), and (4) of the Act.

(d) "Particular statute" means any of the following statutes of particular application: the Act of June 30, 1936, commonly known as the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the Construction Safety Act (40 U.S.C. 333), the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), or the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.).

1911.3—PETITION FOR THE PROMULGATION, MODIFICATION, OR REVOCATION OF A STANDARD

Any interested person may file with the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, a written petition for the promulgation, modification, or revocation of a standard. The petition should include, or be accompanied by, the proposed rule desired and a statement of the reasons therefor and intended effect thereof.

1911.4—ADDITIONAL OR ALTERNATIVE PROCEDURAL REQUIREMENTS

Upon reasonable notice to interested persons, the Assistant Secretary may in any particular proceeding prescribe additional or alternative procedural requirements: (a) In order to expedite the conduct of the proceeding; (b) in order to provide greater procedural protection to interested persons whenever it is found necessary or appropriate to do so; or (c) for any other good cause which may be consistent with the applicable laws.

1911.5—MINOR CHANGES IN STANDARDS

Section 6(b), when construed in light of the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), is read as permitting the making of minor rules or amendments in which the public is not particularly interested without the notice and public procedure which is otherwise required. Whenever such a minor rule or amendment is adopted, it shall incorporate a finding of good cause to this effect for not providing notice and public procedure.

[37 F.R. 8664, April 29, 1972.]

COMMENCEMENT OF RULEMAKING

1911.10—CONSTRUCTION STANDARDS

The Assistant Secretary may promulgate, modify, or revoke a standard applicable to employments in construction work, as defined in § 1910.12(b) of this chapter, in the following manner:

(a) The Assistant Secretary shall consult with the Advisory Committee on Construction Safety and Health, established pursuant to section 107 of the Contract Work Hours and Safety Standards Act, in the formulation of a rule to promulgate, modify, or revoke a standard. The Assistant Secretary shall provide the committee with any proposal of his own or the Secretary of Health, Education, and Welfare, together with all pertinent factual information available to him, including the results of research, demonstrations, and experiments. The committee shall submit to the Assistant Secretary its recommendations regarding the rule to be promulgated within the period prescribed by the Assistant Secretary, which in no event shall be longer than 270 days from the date of initial consultation.

(b) Within 60 days after the submission of the committee's recommendations or after the expiration of the period prescribed for such submissions, whichever date is earlier, the Assistant Secretary, if he determines that a rule should be issued, shall publish in the FEDERAL REGISTER a notice of proposed rulemaking. The notice shall include:

(1) The terms of the proposed rule;

(2) A reference to section 6(b) of the Act and to section 107 of the Contract Work Hours and Safety Standards Act;

(3) An invitation to interested persons to submit within 30 days after publication of the notice written data, views, and arguments, which shall be available for public inspection and copying, except as to matters the disclosure of which is prohibited by law;

(4) The time and place for an informal hearing to be commenced not earlier than 10 days following the end of the period for written comments;

(5) A requirement for the filing of an intention to appear at the hearing, together with a statement of the position to be taken with regard to the proposed rule and of the evidence to be adduced in support of the position;

(6) Designation of a presiding officer to conduct the hearing; and

(7) Any other appropriate provisions pertinent to the proceeding.

(c) Any interested person who files an intention to appear in accordance with paragraph (b) of this section shall have a right to participate at the informal hearing.

(d) In lieu of the procedure prescribed in paragraph (b) of this section, the Assistant Secretary may follow the procedure prescribed in paragraph (b) of § 1911.11 providing an opportunity for informal hearing.

[36 F.R. 17507, Sept. 1, 1971, as amended at 37 F.R. 12231, June 21, 1972.]

1911.11—OTHER STANDARDS

The Assistant Secretary may promulgate, modify, or revoke a standard applicable to employments other than those in construction work, as defined in § 1910.12(b) of this chapter, in the following manner:

(a) The Assistant Secretary may request the recommendations of an advisory committee appointed under section 7 of the Act. In such event, the Assistant Secretary shall submit to the committee any proposal of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information available to him, including the results of research, demonstrations, and experiments. The committee shall submit to the Assistant Secretary its recommendations regarding the rule to be promulgated within the period prescribed by the Assistant Secretary, which in no event shall be longer than 270 days.

(b) The Assistant Secretary shall publish in the Federal Register a notice of proposed rule making. Where an advisory committee has been consulted and the Assistant Secretary determines that a rule should be issued, the notice shall be published within 60 days after the submission of the committee's recommendations or the expiration of the period prescribed for such submissions, whichever date is earlier. The notice shall include:

(1) The terms of the proposed rule;

(2) A reference to section 6(b) of the Act and to the appropriate section of any particular statute applicable to the employments affected by the rule;

(3) An invitation to interested persons to submit within 30 days after publication of the notice written data, views, and arguments, which shall be available for public inspection and copying, except as to matters the disclosure of which is prohibited by law;

(4) Either the time and place of an informal hearing on the proposed rule to be held not earlier than 10 days from the last day of the period for written comments, or information to interested persons that they may file on or before the 30th day after publication of the notice written objections to the proposed rule meeting the requirements of paragraph (c) of this section and request an informal hearing on the objections; and

(5) Any other appropriate provisions with regard to the proceeding.

(c) Objections to be submitted pursuant to paragraph (b) of this section shall comply with the following conditions:

(1) The objections must include the name and address of the objector;

(2) The objections must be postmarked on or before the 30th day after the date of publication of the notice of proposed rulemaking;

(3) The objections must specify with particularity the provision of the proposed rule to which objection is taken, and must state the grounds therefor;

(4) Each objection must be separately stated and numbered; and

(5) The objections must be accompanied by a summary of the evidence proposed to be adduced at the requested hearing.

(d) Within 30 days after the last day for filing objections, if objections are filed in substantial compliance with paragraph (c) of this section, the Assistant Secretary shall, and in any other case may, publish in the FEDERAL REGISTER a notice of informal hearing. The notice shall contain:

(1) A statement of the time, place, and nature of the hearing;

(2) A reference to the authority under which the hearing is to be held;

(3) A specification of the provisions of the proposed rule which have been objected to, and on which an informal hearing has been requested;

(4) A specification of the issues on which the hearing is to be had, which shall include at least all the issues raised by any objections properly filed, on which a hearing has been requested;

(5) The requirement for the filing of an intention to appear at the hearing together with a statement of the position to be taken with regard to the issues specified and of the evidence to be adduced in support of the position;

(6) The designation of a presiding officer to conduct the hearing; and

(7) Any other appropriate provisions with regard to the proceeding.

(e) Any objector requesting a hearing on proposed rule, and any interested person who files a proper intention to appear shall be entitled to participate at a hearing.

1911.12—EMERGENCY STANDARDS

(a)

(1) Whenever an emergency standard is published pursuant to section 6(c) of the Act, the Assistant Secretary must commence a proceeding under section 6(b) of the Act, and the standard as published must serve as a proposed rule. Any notice of proposed rulemaking shall also give notice of any appropriate subsidiary proposals.

(2) An emergency standard promulgated pursuant to section 6(c) of the Act shall be considered issued at the time when the standard is officially filed in the Office of the Federal Register. The time of official filing in the Office of the Federal Register is established for the purpose of determining the prematurity, timeliness, or lateness of petitions for judicial review.

[42 F.R. 65166, December 30, 1977.]

(b) If the Assistant Secretary wishes to consult an advisory committee on any of the proposals as permitted by section 7(b) of the Act, he shall afford interested persons an opportunity to inspect and copy any recommendations of the advisory committee within a reasonable time before the commencement of any informal hearing which may be held under this part, or before the termination of the period for the submission of written comments whenever an informal hearing is not initially noticed under § 1910.11(b)(4) of this chapter.

(c) Section 6(c) requires that any standard must be promulgated following the rule making proceeding within 6 months after the publication of the emergency standard. Because of the shortness of this period, the conduct of the proceeding shall be expedited to the extent practicable.

[37 F.R. 8664, April 29, 1972.]

HEARINGS

1911.15—NOTICE OF HEARING

(a)

(1) The legislative history of section 6 indicates that Congress intended informal rather than formal rule making procedures to apply. See the Conference Report, H. Rept. No. 91–1765, 91st Cong., second sess., 34 (1970). The informality of the proceedings is also suggested by the fact that section 6(b) permits the making of a decision on the basis of written comments alone (unless an objection to a rule is made and a hearing is requested), the use of advisory committees, and the inherent legislative nature of the tasks involved. For these reasons, the proceedings pursuant to § 1911.10 or § 1911.11 shall be informal.

(2) Section 6(b)(3) provides an opportunity for a hearing on objections to proposed rule making, and section 6(f) provides in connection with the judicial review of standards, that determinations of the Secretary shall be conclusive if supported by substantial evidence in the record as a whole. Although these sections are not read as requiring a rule making proceeding within the meaning of the last sentence of 5 U.S.C. 553(c) requiring the application of the formal requirements of 5 U.S.C. 556 and 557, they do suggest a Congressional expectation that the rule making would be on the basis of a record to which a substantial evidence test, where pertinent, may be applied in the event an informal hearing is held.

(3) The oral hearing shall be legislative in type. However, fairness may require an opportunity for cross-examination on crucial issues. The presiding officer is empowered to permit cross-examination under such circumstances. The essential intent is to provide an opportunity for effective oral presentation by interested persons which can be carried out with expedition and in the absence of rigid procedures which might unduly impede or protract the rule making process.

(b) Although any hearing shall be informal and legislative in type, this part is intended to provide more than the bare essentials of informal rule making under 5 U.S.C. 553. The additional requirements are the following:

(1) The presiding officer shall be a hearing examiner appointed under 5 U.S.C. 3105.

(2) The presiding officer shall provide an opportunity for cross-examination on crucial issues.

(3) The hearing shall be reported verbatim, and a transcript shall be available to any interested person on such terms as the presiding officer may provide.

[36 F.R. 17507, Sept. 1, 1971; 37 F.R. 8664, April 29, 1972, as amended at 37 F.R. 12231, June 21, 1972.]

1911.16—POWERS OF PRESIDING OFFICER

The officer presiding at a hearing shall have all the powers necessary or appropriate to conduct a fair and full hearing, including the powers:

(a) To regulate the course of the proceedings;

(b) To dispose of procedural requests, objections, and comparable matters;

(c) To confine the presentations to the issues specified in the notice of hearing, or, where no issues are specified, to matters pertinent to the proposed rule;

(d) To regulate the conduct of those present at the hearing by appropriate means;

(e) In his discretion, to permit cross-examination of any witness;

(f) To take official notice of material facts not appearing in the evidence in the record, so long as parties are entitled, on timely request, to an opportunity to show the contrary; and

(g) In his discretion, to keep the record open for a reasonable, stated time to receive written recommendations, and supporting reasons, and additional data, views, and arguments from any person who has participated in the oral proceeding.

1911.17—CERTIFICATION OF THE RECORD OF A HEARING

Upon completion of the oral presentations, the transcript thereof, together with written submissions on the proposed rule, exhibits filed during the hearing, and all posthearing comments, recommendations, and supporting reasons shall be certified by the officer presiding at the hearing to the Assistant Secretary.

1911.18—DECISION

(a)

(1) Within 60 days after the expiration of the period provided for the submission of written data, views, and arguments on a proposed rule on which no hearing is held, or within 60 days after the certification of the record of a hearing, the Assistant Secretary shall publish in the FEDERAL REGISTER either an appropriate rule promulgating, modifying, or revoking a standard, or a determination that such a rule should not be issued. The action of the Assistant Secretary shall be taken after consideration of all relevant matter presented in written submissions and in any hearings held under this part.

(2) A determination that a rule should not be issued on the basis of existing relevant matter may be accompanied by an invitation for the submission of additional data, views, or arguments from interested persons on the issue or issues involved. In which event, an appropriate rule or other determination shall be made within 60 days following the end of the period allowed for the submission of the additional comments.

(b) Any rule or standard adopted under paragraph (a) of this section shall incorporate a concise general statement of its basis and purpose. The statement is not required to include specific and detailed findings and conclusions of the kind customarily associated with formal proceedings. However, the statement will show the significant issues which have been faced, and will articulate the rationale for their solution.

(c) Where an advisory committee has been consulted in the formulation of a proposed rule, the Assistant Secretary may seek the advice of the advisory committee as to the disposition of the proceeding. In giving advice to the Assistant Secretary, an advisory committee shall consider all matter presented to the Assistant Secretary. The advice of an advisory committee shall take the form of written recommendations to be submitted to the Assistant Secretary within a period to be prescribed by him. When the recommendations are contained in the transcript of the meeting of an advisory committee, they shall be summary in form. See §§ 1912.33 and 1912.34 of this chapter.

[36 F.R. 17507, Sept. 1, 1971, as amended at 37 F.R. 8665, April 29, 1972.]

(d) A rule promulgating, modifying, or revoking a standard, or a determination that a rule should not be promulgated, shall be considered issued at the time when the rule or determination is officially filed in the Office of the Federal Register. The time of official filing in the Office of the Federal Register is established for the purpose of determining the prematurity, timeliness, or lateness of petititons for judicial review.

[42 F.R. 65166, December 30, 1977.]

PART 1912

ADVISORY COMMITTEES ON STANDARDS

APPLICATION OF THE FEDERAL ADVISORY COMMITTEE ACT

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1912.4 Avoidance of duplication.
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MISCELLANEOUS

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1912.43 Petitions for changes in the rules; complaints.
1912.44 Definitions.

AUTHORITY: Secs. 6(b), 7(b), 8(g), Public Law 91-596, 84 Stat. 1593, 1597, 1600 (29 U.S.C. 655(b), 656(b), 657(g)). Interpret or apply Public Law 92-463, 86 Stat. 770-778.

SOURCE: The provisions of this Part 1912 appear at 38 F.R. 28035, October 11, 1973 unless otherwise noted.

1912.1—PURPOSE AND SCOPE

(a) This Part prescribes the policies and procedures governing the composition and functions of advisory committees which have been, or may be, appointed under section 7(b) of the Act to assist the Assistant Secretary in carrying out the standards-setting duties of the Secretary of Labor under section 6 of the Act. Such committees are specifically authorized by section 7(b). The Part also prescribes the policies and procedures governing the composition and functions of the Advisory Committee on Construction Safety and Health.

(b) The policies and practices herein are intended to reflect those expressed in the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) and will be applied in a manner consistent with the Act, Office of Management and Budget Circular A–63, "Committee Management," and the Department of Labor's general rules under that Act which are published in Part 15 of this title.

ORGANIZATIONAL MATTERS

1912.2—TYPES OF STANDARDS ADVISORY COMMITTEES

The Assistant Secretary establishes two types of advisory committees under section 7(b) of the Act to assist him in his standards-setting duties. These are:

(a) Continuing committees which have been, or may be established from time to time, to assist in the development of standards in areas where there is frequent rulemaking and the use of ad hoc committees is impractical; and

(b) Ad hoc committees which are established to render advice in particular rulemaking proceedings.

1912.3—ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH

(a) This Part applies to the Advisory Committee on Construction Safety and Health which has been established under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), commonly known as the Construction Safety Act. The aforesaid section 107 requires the Secretary of Labor to seek the advice of the Advisory Committee in formulating construction standards thereunder. The standards which have been issued under section 107 are published in Part 1926 of this chapter. In view of the far-reaching coverage of the Construction Safety Act, the myriad of standards which may be issued thereunder, and the fact that the Construction Safety Act would also apply to much of the work which is covered by the Williams-Steiger Occupational Safety and Health Act of 1970, whenever occupational safety or health standards for construction activities are proposed, the Assistant Secretary shall consult the Advisory Committee. The composition of the Advisory Committee is consistent with that of advisory committees which may be appointed under section 7(b) of the Act. See paragraph (c) of this section. An additional advisory committee will not normally be established under section 7(b) of the Act, unless the issue or issues involved include, but extend beyond construction activity. See § 1912.4 concerning the general policy against duplication of activity by advisory committees.

(b) The Advisory Committee is a continuing advisory body. It is composed of 15 members appointed by the Assistant Secretary, one of whom is appointed by him as Chairman. The composition of the Advisory Committee is as follows:

(1) One member who is a designee of the Secretary of Health, Education, and Welfare;

(2) Five members who are qualified by experience and affiliation to present the viewpoint of the employers involved, and five members who are similarly qualified to present the viewpoint of the employees involved;

(3) Two representatives of State safety and health agencies; and

(4) Two members who are qualified by knowledge and experience to make a useful contribution to the work of the Committee.

(c) As originally constituted, the Advisory Committee was composed of nine members. However, pursuant to section 105 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 331), it has been found necessary and proper in the public interest and in order to prevent possible injustice, to vary the composition of the Advisory Committee:

(1) By having its membership and representation conform to the provisions of section 7(b) of the Williams-Steiger Occupational Safety and Health Act, and

(2) By increasing its membership to 15 members as permitted under the aforementioned section 7(b). Greater membership and greater representation serve the public interest and avoids possible injustice by permitting for the most part the use of one advisory committee, rather than possibly several advisory committees, in situations where both the Contract Work Hours and Safety Standards Act and the Williams-Steiger Occupational Safety and Health Act may be expected to apply to construction activity and by affording a greater opportunity for representation on the Advisory Committee within the construction industry.

(d) See paragraph (c) of § 1912.5 regarding the general policy role of the Advisory Committee.

(e) Except as provided in remaining paragraphs of this section, each member of the Advisory Committee shall serve for a period of 2 years, unless he becomes unable to serve, or resigns, or ceases to be qualified to serve on the Committee because he no longer meets any relevant representational requirements, or is removed by the Assistant Secretary in the interests of the administration of legislation involved. In such cases, the Assistant Secretary may appoint a new member to serve for the remainder of the unexpired term, who shall be representative of the same interest.

(f) The designee of the Secretary of Health, Education, and Welfare shall have no fixed term.

(g) To provide for continuity in the membership of the Committee, the terms of the members may be appropriately staggered.

(h) Members may be appointed to successive terms.

(i) A member who is otherwise qualified may continue to serve until a successor is appointed.

(j) There shall be filed on behalf of the Advisory Committee on Construction Safety and Health, an advisory committee established by the Construction Safety Act, a charter in accordance with section 9(c) of the Federal Advisory Committee Act upon the expiration of each successive 2-year period following the date of enactment of the Construction Safety Act (i.e., August 9, 1969).

1912.4—AVOIDANCE OF DUPLICATION

No standards advisory committee shall be created if its duties are being, or could be, performed by an existing advisory committee established under section 7(b) of the Act.

1912.5—NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH

(a) Section 7(a) of the Act established a National Advisory Committee on Occupational Safety and Health. The Committee is to advise, consult with, and make recommendations to the Secretary and the Secretary of Health, Education, and Welfare on matters relating to general administration of the Act.

(b) Advisory committees appointed under section 7(b) of the Act, which are the subject of this Part, have a more limited role. Such advisory committees are concerned exclusively with assisting the Assistant Secretary in his standards-setting functions under section 6 of the Act.

(c) On the other hand, the Advisory Committee on Construction Safety and Health, established under the Construction Safety Act, provides assistance in both the setting of standards thereunder and policy matters arising in the administration of the Construction Safety Act. To the extent that the Advisory Committee on Construction Safety and Health renders advice to the Assistant Secretary on general policy matters, its activities should be coordinated with those of the National Advisory Committee on Occupational Safety and Health.

1912.6—CONFLICT OF INTEREST

No members of any advisory committee other than members representing employers or employees shall have an economic interest in any proposed rule.

1912.7—REPORTS

The Assistant Secretary shall prepare, or cause to be prepared, for the Department of Labor's Committee Management Officer reports describing the committee's membership, functions, and actions as may be necessary for the permance of the duties of the Committee Management officer.

1912.8—COMMITTEE CHARTERS

(a) Filing: No advisory committee shall take any action or conduct any business subsequent to January 5, 1973, until a committee charter has been filed with the Secretary of Labor, the standing committees of the Congress having legislative jurisdiction of the Department of Labor and the Library of Congress.

(b) Committee charter information: Each Advisory committee charter shall contain the following information:

(1) The committee's official designation;

(2) The committee's objectives and scope of activity; i.e., the standard or standards to be developed;

(3) The period of time necessary for the committee to carry out its purposes;

(4) The agency to whom the advisory committee reports (i.e., the Assistant Secretary);

(5) The agency responsible for providing support (i.e., the Occupational Safety and Health Administration);

(6) Description of the committee's duties;

(7) The estimated number and frequency of committee meetings;

(8) The estimated annual operating costs in dollars and man-years;

(9) The committee's termination date or other fixed period of termination, if less than 2 years (see § 1912.3(j) concerning the Advisory Committee on Construction Safety and Health); and

(10) The date the charter is filed with the Department of Labor's Committee Management Officer.

(c) Applicability of this section to subgroups: The applicability of this section to subgroups of an advisory committee depends upon the nature of the subgroup. With regard to formal subgroups, such as a formal subcommittee of an advisory committee, the requisite information should be set forth either in the charter of the parent committee or in a separate charter. Informal subgroups of an advisory committee, particularly those temporary in nature, need not be reflected expressly in a charter.

(d) The Assistant Secretary shall file each charter with the Department's Committee Management Officer.

1912.9—REPRESENTATION ON SECTION 7(b) COMMITTEES

(a) Any advisory committee appointed by the Assistant Secretary under section 7(b) of the Act shall contain the following:

(1) At least one member who is a designee of the Secretary of Health, Education, and Welfare;

(2) At least one member who is qualified by experience and affiliation to present the viewpoint of the employers involved, and at least one member who is similarly qualified to present the viewpoint of the employees involved. There shall be an equal number of representatives of employers and employees involved; and

(3) At least one representative of State health and safety agencies.

(b) The advisory committee may include such other persons as the Assistant Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of the committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health and one or more persons of nationally recognized standards-producing organizations, but the number of persons so appointed shall not exceed the number of persons appointed as representatives of Federal and State agencies.

(c) Each committee shall consist of not more than 15 members.

(d) The representation in the Advisory Committee on Construction Safety and Health is described in § 1912.3.

1912.10—TERMS OF CONTINUING COMMITTEE MEMBERS

(a) Each member of a continuing committee established under section 7(b) of the Act, other than those appointed to a committee when it is formed initially shall serve for a period of 2 years, unless he becomes unable to serve, or resigns, or ceases to be qualified to serve because he no longer meets the representation requirements of section 7(b) of the Act or is removed by the Assistant Secretary in the interest of the administration of the Act. In such cases the Assistant Secretary may appoint a new member to serve for the remainder of the unexpired term, who shall be representative of the same interest.

(b) To provide for continuity in the membership of continuing committees the initial appointments of its members may be varied. For example, in the case of a 15-member committee, the Assistant Secretary could appoint two members representing Federal and State agencies, two members representing employers, two members representing employees, and two members representing other interests to one year terms. He could appoint two members representing Federal and State agencies, two members representing employers, two members representing employees, and one member representing other interests for two year terms. Thereafter, at the expiration of such terms, members would be appointed or reappointed for regular terms of two years. The initial appointments to committees with fewer than 15 members could be similarly varied.

1912.11—TERMS OF AD HOC COMMITTEE MEMBERS

Each member of an ad hoc advisory committee shall serve for such period as the Assistant Secretary may prescribe in his notice of appointment unless he becomes unable to serve, or resigns, or ceases to be qualified to serve because he no longer meets the representational requirements of section 7(b) of the Act, or is removed by the Assistant Secretary in the interest of the administration of the Act. In such cases, the Assistant Secretary may appoint a new member to serve for the remaining portion of the period prescribed in the notice appointing the original member of the committee.

1912.12—TERMINATION OF ADVISORY COMMITTEES; RENEWAL

(a) Every standards advisory committee established under section 7(b) of the Act shall terminate not later than 2 years after its charter has been filed, unless its charter is renewed by appropriate action for a successive period of not more than 2 years. The procedure for renewal shall be the same as that specified in paragraph (b) of this section.

(b) Each advisory committee established under section 7(b) of the Act which is in existence on January 5, 1973, shall terminate by January 5, 1975, unless it is renewed before the latter date. Before any advisory committee can be renewed, the Assistant Secretary must determine that such renewal is necessary, and so inform the Department of Labor's Committee Management Officer. The OMB Secretariat must be informed of this determination and the reasons for it. Such determination shall be made not more than 60 days before the scheduled date of termination. If the OMB Secretariat concurs, a new charter shall be filed renewing the advisory committee and a notice of the renewal shall be published in the FEDERAL REGISTER.

(c) Unless provided otherwise by the Assistant Secretary, the duration of a subgroup of a committee shall not be longer than that of the parent committee.

(d) No advisory committee required to file a new charter under this section shall take any action (other than the preparation and filing of charter) before the date on which the charter is filed.

OPERATION OF ADVISORY COMMITTEES

1912.25—CALL OF MEETINGS

No advisory committee shall hold any meeting except at the call of, or with the advance approval of, the Assistant Secretary or his representative designated for this purpose. The Department of Labor's Committee Management Officer shall be promptly informed of any meeting that is called.

1912.26—APPROVAL OF AGENDA

Each meeting of an advisory committee shall be conducted in accordance with an agenda approved by the Assistant Secretary or his representative designated for this purpose. No particular form for the agency is prescribed.

1912.27—NOTICE OF MEETINGS

Public notice of any meeting of an advisory committee shall be given by the officer or employee calling the meeting at least seven (7) days in advance of the meeting; except when it is impractical to do so, or in an emergency situation, in which event shorter advance notice may be given to the extent that any advance notice is practical. It shall, however, be a general policy to publish notices as far in advance of the meeting as circumstances will permit. Such notice shall be given by publication in the FEDERAL REGISTER. In addition, notice may be given by such other means as press releases.

1912.28—CONTENTS OF NOTICE

(a) The notice shall give the name of the committee, and the time and place of the meeting.

(b) The notice shall describe fully or summarize adequately the agenda.

(c) The notice shall announce that the meeting is open to the public.

(d) The notice shall indicate that interested persons have an opportunity to file statements in written form with the committee. The notice may specify whether the statements are to be filed before or during the meeting.

(1) The chairman may permit oral statements before the committee by interested persons. In exercising his discretion in this regard, the chairman shall take into consideration the number of persons in attendance, the nature and extent of their proposed individual participation, the extent to which presentations would anticipate presentations which may be made in any rulemaking proceeding under section 6 of the Act subsequent to the recommendations of the committee, and the time, resources, and facilities available to the committee. When counsel is made available to the committee, the chairman shall consult counsel before making a decision on whether to permit oral statements. In his discretion, the chairman, upon consultation with counsel if made available to the committee, may allow or preclude the questioning of committee members or other participants.

(2) The person calling the meeting may provide in the notice of the meeting that summaries of any proposed oral presentations be filed in advance of the meeting, and may allow or preclude the questioning of committee members or other participants.

1912.29—ATTENDANCE BY MEMBERS

Any person appointed by the Assistant Secretary to an advisory committee has a right to be present at any duly called meeting. If any person representing the interests of employers, employees, or the States is unable to be present at a duly called meeting, he may notify the Assistant Secretary or his designee, and request that another member of the committee representing the same interests be permitted to vote in his place on any matters coming before the advisory committee in the particular meeting. The request may be oral or in writing, and shall be accompanied by a statement of reasons for the anticipated absence. The Assistant Secretary or his designee shall grant the request whenever he is convinced that the reasons for absence are valid and that number of requested proxies for any particular meeting will not be so numerous as to impede materially the deliberations of the advisory committee.

1912.30—QUORUM; COMMITTEE PROCEDURE

(a) A majority of the members of any advisory committee, including the Construction Safety Advisory Committee, shall constitute a quorum, so long as there are present at least one member who is a representative of employees and one member who is a representative of employers.

(b) In the absence of its chairman, the committee may designate a member to preside at any meeting thereof.

1912.31—EXPERTS AND CONSULTANTS

At the request of an advisory committee or the person calling a meeting of an advisory committee, the Assistant Secretary may make available to the committee any experts or consultants in the field involved. Any expert or consultant so made available may participate in the deliberations of the committee with the consent of the committee.

1912.32—PRESENCE OF OSHA OFFICER OR EMPLOYEE

The meetings of all advisory committees shall be in the presence of an OSHA officer or employee designated for this purpose. Such officer or employee shall be empowered to adjourn any meeting whenever he determines adjournment to be in the public interest.

1912.33—MINUTES

(a) Detailed minutes of advisory committee meetings shall be prepared, as directed, and certified as accurate, by the chairman of the committee. In addition to the minutes there shall be kept verbatim transcripts of all advisory committee meetings.

(b) The minutes shall include at least the following:

(1) A list of the advisory committee members and agency employees who were present at the meeting;

(2) Any significant conclusions reached which are not recommendations;

(3) Any written information made available for consideration by the committee, including copies of all reports received, issued, or approved by the committee;

(4) Any recommendations made by the committee to the Assistant Secretary and the reasons therefor;

(5) An explanation of the extent, if any, of public participation, including a list of interested persons who presented oral or written statements; and an estimate of the number of the members of the public who attended the meeting.

1912.34—FREEDOM OF INFORMATION ACT

Subject to the Freedom of Information Act (5 U.S.C. 552) and Part 70 of this title and Part 1913 of this chapter, there shall be available for public inspection and copying in the Office of Standards, Occupational Safety and Health Administration, documents which were made available to or prepared for or by each advisory committee.

1912.35—AVAILABILITY AND COST OF TRANSCRIPTS

Except where prohibited by contractual agreements entered into before the effective date of the Federal Advisory Committee Act (January 5, 1973), any transcripts of advisory committee meetings are to be made available to any person at the actual cost of duplication.

1912.36—ADVICE OF ADVISORY COMMITTEES

(a) Approval by a majority of all members of an advisory committee is encouraged for rendering advice or making recommendations. However, a failure to marshal a majority of all members of an advisory committee shall not be a reason for not giving advice to the Assistant Secretary. The Assistant Secretary shall be informed of any concurring or dissenting views.

(b) An advisory committee shall submit to the Assistant Secretary its recommendations within 90 days from the date of its commencement of its assigned tasks, or within such longer or shorter period otherwise prescribed by the Assistant Secretary or one of his representatives. If a committee believes that it cannot submit its recommendations within the applicable period, its chairman may make a written request for an extension of time to the Director of the Office of Standards, before the expiration of the period. The Director of the Office of Standards may grant such a request, provided that the period of the extension or extensions, together with the original period for the submission of recommendations, is not longer than 270 days from the date the advisory committee commenced its assigned tasks.

(c) In a case where an advisory committee has not submitted its recommendations by the end of the applicable period therefor, the Assistant Secretary may dissolve the committee and direct the immediate transmittal to him of any materials submitted to, or prepared by, the advisory committee.

MISCELLANEOUS

1912.40—GENERAL SERVICES

The Assistant Secretary shall provide supporting services to advisory committees. Such services shall include clerical, stenographic, and other forms of technical assistance.

1912.41—LEGAL SERVICES

The Solicitor of Labor shall provide such legal assistance as may be necessary or appropriate for advisory committees to carry out their functions in accordance with the requirements of this Part.

1912.42—RESERVATION

The policies and procedures set forth in this part are intended for general application. In specific situations where the Assistant Secretary determines that different policies or procedures would better serve the objectives of the Act, such policies or procedures may be modified upon appropriate notice to any persons affected by the modification to the extent that such policies or procedures are consistent with the Federal Advisory Committee Act and OMB Circular A-63, and are approved by the Solicitor under Part 15 of this title.

1912.43—PETITIONS FOR CHANGES IN THE RULES; COMPLAINTS

(a) Each interested person shall have the right to petition for the issuance, amendment, or repeal of rules published in this Part. Any such petition will be considered in a reasonable time. Prompt notice shall be given of the denial in whole or in part of any petition. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the reasons therefor.

(b) Any advisory committee member or any other aggrieved person may file a written complaint with the Assistant Secretary alleging noncompliance with the rules in this Part. Any complaint must be timely filed, but in no case shall any complaint be filed later than thirty (30) days following the act of alleged noncompliance. Any complaint shall be acted upon promptly and a written notice of the disposition of the complaint shall be provided to the complainant.

1912.44—DEFINITIONS

As used in this Part 1912, unless the context clearly requires otherwise:

(a) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590; 29 U.S.C. 650).

(b)

(1) For purposes of implementing the Federal Advisory Committee Act, the term "Advisory Committee" has the same meaning as set forth in section 3 (2) thereof. Hence, the term includes subcommittees to the extent that the conduct of their meetings relates to matters regulated by the Federal Advisory Committee Act. Consistent with that definition as interpreted in Office of Management and Budget (OMB) Circular A-63, the term does not include informal subgroups having few characteristics of formal advisory committees.

(2)

(i) For purposes of the Act, the term means any committee appointed under section 7(b) thereof to provide advice to the Assistant Secretary in the development of occupational safety and health standards under the Act.

(ii) The term also includes the Advisory Committee on Construction Safety and Health established under the Construction Safety Act.

(c) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

(d) "Committee charter" means an order, statement or proclamation of the Assistant

Secretary establishing, continuing, or using an advisory committee, as the case may be.

(e) "Construction Safety Act" means section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96; 40 U.S.C. 333).

PART 1912a

NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH

1912a.1 Purpose and scope.
1912a.2 Membership.
1912a.3 Terms of membership.
1912a.4 Meetings.
1912a.5 Advice and recommendations.
1912a.6 Quorum.
1912a.7 Notice of meetings.
1912a.8 Contents of notice.
1912a.9 Assistance to the committee.
1912a.10 Presence of OSHA officer or employee.
1912a.11 Minutes; transcript.
1912a.12 Charter.
1912a.13 Subcommittees and subgroups.
1912a.14 Petitions for change in the rules; complaints.

AUTHORITY: Secs. 7(a), 8(g), Pub. L. 91-596, 84 Stat. 1597, 1600 (29 U.S.C. 556(a), 657(g)).

SOURCE: The provisions of this Part 1912a appear at 38 F.R. 28934, October 18, 1973 unless otherwise noted.

1912a.1—PURPOSE AND SCOPE

(a) Section 7(a) of the Williams-Steiger Occupational Safety and Health Act of 1970 establishes a National Advisory Committee on Occupational Safety and Health (hereinafter referred to as the Committee), to advise, consult with, and make recommendations to the Secretary of Labor and the Secretary of Health, Education, and Welfare, on matters relating to the administration of the Act.

(b) This Part 1912a sets forth the procedures used by the Committee in fulfilling its responsibilities. They are intended to comply with the requirements of the Federal Advisory Committee Act (Pub. L. 92-463), which obligates advisory committees used by Federal agencies to adhere to certain basic methods of operation and administration.

1912a.2—MEMBERSHIP

The Committee is a continuing advisory body of 12 members. Two members will represent management, two members will represent labor, two members will represent the occupational health professions, two members will represent the occupational safety professions, and four members will represent the public. The Secretary of Health, Education, and Welfare will designate the two members representative of the occupational health professions and two of the members representative of the public. All the members will be selected upon the basis of their experience and competence in the field of occupational safety and health. All the members will be appointed by the Secretary of Labor, who will designate one of the public members as Chairman.

1912a.3—TERMS OF MEMBERSHIP

Commencing on July 1, 1973, the terms of membership shall be divided into two classes, each consisting of six members. Members of the first class shall be appointed for a term of one year. Members of the second class shall be appointed for a term of two years. Thereafter, members shall be appointed for regular terms of two years. At all times the Committee shall be composed of representatives of management, labor, and occupational safety and health professions, and of the public. Each member of the Committee shall serve his full term unless he resigns or becomes unable to serve in the judgment of the Secretary of Labor because of disability or because he ceases to be qualified to serve on the Committee because he is found by the Secretary of Labor no longer to meet the representational requirements of the Act. In such cases, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who meets the same representational requirements, and is designated in the manner, of his predecessor.

1912a.4—MEETINGS

(a) The Committee shall hold no fewer than two meetings during each calendar year and, it is contemplated that no more than six meetings a year will be held. No meeting shall be held except at the call of or with the advance approval of:

(1) The Secretary of Labor, or his duly authorized representative; or

(2) The Secretary of Health, Education, and Welfare, or his duly authorized representative.

(b) An agenda shall be approved in advance by the person calling or approving the meeting, in consultation with the Chairman or his delegate. No particular form for the agenda is prescribed. Members of the Committee may propose items for the agenda to the Chairman.

1912a.5—ADVICE AND RECOMMENDATIONS

Any advice or recommendations of the Committee shall be given or made with approval of a majority of all Committee members present. The Chairman shall include in any report of such advice or recommendations any concurring or dissenting views as well as abstentions and absences. Any member may submit his own advice and recommendations in the form of individual views with respect to any matter which has been considered by the Committee.

1912a.6—QUORUM

(a) A majority of the members of the Committee shall constitute a quorum, except that at least one management representative-member, one labor representative-member and one member representing the public must be included in the majority which constitutes the quorum.

(b) In an absence of brief duration of its Chairman, the Committee may designate a public member to preside at any meeting thereof. In case of an extended absence, the Secretary of Labor or his delegate shall appoint a public member to preside.

1912a.7—NOTICE OF MEETINGS

Public notice of any meeting of the Committee shall be given by the person calling the meeting in accordance with § 1912a.4 or at his direction at least seven (7) days in advance of the meeting; except when it is impractical to do so, or in an emergency situation, in which event shorter advance notice may be given. Such notice shall be given by publication in the FEDERAL REGISTER as much in advance of the meeting as circumstances will permit. In addition, notice may be given by such other means as press releases.

1912a.8—CONTENTS OF NOTICE

(a) Notices of meetings shall describe fully or summarize adequately the agenda.

(b) The notice shall announce that the meeting is open to the public.

(c) The notice shall indicate that interested persons have an opportunity to file statements in written form with the Committee. The notice shall specify when the statements are to be filed with the Committee.

(d) In the discretion of the Chairman of the meeting, oral statements may be made before the Committee by interested persons after taking into consideration the number of persons in attendance, the nature and extent of their proposed individual participation, and the time, resources, and facilities available to the Committee. As a general policy, time for such presentations will be made available only at subcommittee meetings. The time for a meeting of the full committee does not normally permit the reception of such presentations without substantially intruding upon the frequently limited time that the members may be able to devote to the meeting. The person calling the meeting may provide in the notice of the meeting that summaries of any proposed oral presentations be filed in advance of the meeting.

1912a.9—ASSISTANCE TO THE COMMITTEE

(a) At the request of the Committee or the person calling a meeting, the Assistant Secretary of Labor for Occupational Safety and Health may make available to the Committee any needed experts or consultants. Any expert or consultant so made available may participate in the deliberations of the Committee with the consent of the Committee.

(b) The Assistant Secretary shall furnish the Committee an executive secretary. He shall also furnish such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(c) The Solicitor of Labor shall provide such legal assistance as may be necessary or appropriate for the Committee to carry out its functions in accordance with the requirements of this part.

1912a.10—PRESENCE OF OSHA OFFICER OR EMPLOYEE

The meetings of all advisory committees shall be in the presence of an officer or employee of the Federal Government referred to in § 1912a.4. Such officer or employee shall be empowered to adjourn any meeting whenever he determines adjournment to be in the public interest.

1912a.11—MINUTES; TRANSCRIPT

(a) Detailed minutes of the Committee meetings shall be prepared, and shall be certified as accurate by the Chairman. In addition to the minutes there shall be kept verbatim transcripts of the Committee meetings.

(b) The minutes shall include at least the following:

(1) A list of the Committee members and agency employees who were present at the meeting;

(2) Any significant conclusions reached which are not recommendations;

(3) Any written information made available for consideration by the Committee, including copies of all reports received, issued, or approved by the Committee;

(4) Any recommendations made by the Committee and the reasons therefor;

(5) An explanation of the extent, if any, of public participation, including a list of interested persons who presented oral or written statements; and an estimate of the number of the members of the public who attended the meeting.

1912a.12—CHARTER

The Committee shall operate in accordance with its charter. In accordance with section 14(b)(2) of the Federal Advisory Committee Act, there shall be filed on behalf of the Committee a charter in accordance with section 9(c) thereof upon the expiration of each successive two-year period following December 28, 1970, the date of enactment of the Occupational Safety and Health Act.

1912a.13—SUBCOMMITTEES AND SUBGROUPS

(a) The Chairman may appoint from among the members of the Committee any number All the provisions of this part regarding the conduct of Committee meetings are applicable to the conduct of subcommittee meetings. For example, any meeting of subcommittees shall be open to the public, and notice of subcommittee meetings shall be published in the FEDERAL REGISTER.

(b) The purpose of any subcommittee is to give advice and make recommendations solely to the full Committee and under no circumstances may any subcommittee act outside this purpose. The Chairman may appoint any member of a Subcommittee to act of subcommittees for the purpose of assisting the Committee in carrying out its functions. as Chairman.

(c) Subcommittee shall operate in accordance with the Committee's charter and the procedures set forth in this Part.

(d) The Chairman may appoint temporary informal subgroups from among the members to perform such services as assisting the Committee or the Chairman by gathering technical information or for suggesting schedules, plans, agenda, terms or methods of operation.

1912a.14—PETITIONS FOR CHANGES IN THE RULES; COMPLAINTS

(a) Any interested person shall have the right to petition for the issuance, amendment, or repeal of rules published in this part. Any such petition will be considered in a reasonable time. Prompt notice shall be given of the denial in whole or in part of any petition. Except in affirming a prior denial or when the denial is self-explanatory the notice shall be accompanied by a brief statement of the reasons therefor.

(b) Any advisory committee member or any other aggrieved person may file a written complaint with the Assistant Secretary alleging noncompliance with the rules in this Part. Any complaint must be timely filed, but in no case shall any complaint be filed later than thirty (30) days following the day on which the act of alleged noncompliance occurred. Any complaint shall be acted upon promptly and a written notice of the disposition of the complaint shall be provided to the complainant.

(c) Complaints and petitions should make reference to this § 1912a.14 and be filed and addressed as follows:

Assistant Secretary of Labor for Occupational Safety and Health
United States Department of Labor
Washington, D.C. 20210.

Assistant Secretary of Labor for Occupational Safety and Health
United States Department of Labor
Washington, D.C. 20210.

PART 1913

RULES OF AGENCY PRACTICE AND PROCEDURE CONCERNING OSHA ACCESS TO EMPLOYEE MEDICAL RECORDS

1913.10 Rules of agency practice and procedure concerning OSHA access to employee medical records.

AUTHORITY: Secs. 8(c) and 8(g) (84 Stat. 1599, 1600; 29 U.S.C. 657), section (e) of the Privacy Act (88 Stat. 1899, 1900; 5 U.S.C. 552a(e)), and 5 U.S.C. 301 (80 Stat. 379).

SOURCE: The provisions of this part 1913 appear at 45 F.R. 35294, May 23, 1980 unless otherwise noted.

1913.10—RULES OF AGENCY PRACTICE AND PROCEDURE CONCERNING OSHA ACCESS TO EMPLOYEE MEDICAL RECORDS

(a) General policy. OSHA access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, OSHA authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, OSHA examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by OSHA only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

(b) Scope and application.

(1) Except as provided in paragraphs (b)(3)-(b)(6) below, this section applies to all requests by OSHA personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provisions of 29 CFR 1910.20(e).

(2) For the purposes of this section, "personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

(3) This section does not apply to OSHA access to, or the use of, aggregate employee medical information or medical records on individual employees which is not in a personally identifiable form. This section does not apply to records required by 29 CFR Part 1904, to death certificates, or to employee exposure records, including biological monitoring records treated by 29 CFR 1910.20(c)(5) or by specific occupational safety and health standards as exposure records.

(4) This section does not apply where OSHA compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health standard, or with 29 CFR 1910.20. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the recordholder. The OSHA compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

(5) This section does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

(6) This section does not apply where a written directive by the Assistant Secretary authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

(7) Even if not covered by the terms of this section, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public (See, 29 CFR 70.26 & 70a.3).

(c) Responsible persons.

(1) Assistant Secretary. The Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) shall be responsible for the overall administration and implementation of the procedures contained in this section, including making final OSHA determinations concerning:

(i) Access to personally identifiable employee medical information (paragraph (d)), and

(ii) Inter-agency transfer or public disclosure of personally identifiable employee medical information (paragraph (m)).

(2) OSHA Medical Records Officer. The Assistant Secretary shall designate an OSHA official with experience or training in the evaluation, use, and privacy protection of medical records to be the OSHA Medical Records Officer. The OSHA Medical Records Officer shall report directly to the Assistant Secretary on matters concerning this section and shall be responsible for:

(i) Making recommendations to the Assistant Secretary as to the approval or denial of written access orders (paragraph (d)).

(ii) Assuring that written access orders meet the requirements of paragraphs (d)(2) and (d)(3) of this section.

(iii) Responding to employee, collective bargaining agent, and employer objections concerning written access orders (paragraph (f)).

(iv) Regulating the use of direct personal identifiers (paragraph (g)),

(v) Regulating internal agency use and security of personally identifiable employee medical information (paragraphs (h)-(j)),

(vi) Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees (paragraph (k)),

(vii) Preparing an annual report of OSHA's experience under this section (paragraph (l)), and

(viii) Assuring that advance notice is given of intended inter-agency transfers or public disclosures (paragraph (m)).

(3) Principal OSHA Investigator. The Principal OSHA Investigator shall be the OSHA employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section (paragraphs (d)-(m). When access is pursuant to a written access order, the Principal OSHA Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, biostatistics, environmental health, etc.).

(d) Written access orders.

(1) Requirement for written access order. Except as provided in paragraph (d)(4) below, each request by an OSHA representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other recordholder shall be made pursuant to a written access order which has been approved by the Assistant Secretary upon the recommendations of the OSHA Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by, an administrative subpoena.

(2) Approval criteria for written access order. Before approving a written access order, the Assistant Secretary and the OSHA Medical Records Officer shall determine that:

(i) The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

(ii) The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

(iii) The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

(3) Content of written access order. Each written access order shall state with reasonable particularity:

(i) The statutory purposes for which access is sought,

(ii) A general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information,

(iii) Whether medical information will be examined on-site, and what type of information will be copied and removed off-site,

(iv) The name, address, and phone number of the Principal OSHA Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

(v) The name, address, and phone number of the OSHA Medical Records Officer, and

(vi) The anticipated period of time during which OSHA expects to retain the employee medical information in a personally identifiable form.

(4) Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

(i) **Specific written consent.** If the specific written consent of an employee is obtained pursuant to 29 CFR 1910.20(e)(2)(ii), and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal OSHA Investigator shall be promptly named to assure protection of the information, and the OSHA Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs (h)-(m) of this section.

(ii) **Physician consultations.** A written access order need not be obtained where an OSHA staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the OSHA physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records, however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the OSHA physician shall leave his or her control without the permission of the OSHA Medical Records Officer.

(e) Presentation of written access order and notice to employees.

(1) The Principal OSHA Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal OSHA Investigator or to the OSHA Medical Records Officer.

(2) The Principal OSHA Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

(3) The Principal OSHA Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter (*See*, 29 CFR 1910.20(e)(3)(ii)).

(4) The Principal OSHA Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal OSHA Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

(f) Objections concerning a written access order. All employee, collective bargaining agent, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the OSHA Medical Records Officer. Unless the agency decides otherwise, access to the records shall proceed without delay notwithstanding the lodging of an objection. The OSHA Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to OSHA access. Where appropriate, the OSHA Medical Records Officer may revoke a written access order and direct that any medical information obtained by it be returned to the original recordholder or destroyed. The Principal OSHA Investigator shall assure that such instructions by the OSHA Medical Records Officer are promptly implemented.

(g) Removal of direct personal identifiers. Whenever employee medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal OSHA Investigator shall, unless otherwise authorized by the OSHA Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number for each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal OSHA Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the OSHA Medical Records Officer. The OSHA Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

(h) Internal agency use of personally identifiable employee medical information.

(1) The Principal OSHA Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section

(2) The Principal OSHA Investigator, the OSHA Medical Records Officer, the Assistant Secretary, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No OSHA employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

(3) Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the Office of the Solicitor of Labor, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

(4) OSHA employees and contractors are only authorized to use personally identifiable employee medical information for the purpose for which it was obtained, unless the specific written consent of an employee is obtained as to a secondary purpose, or the procedures of paragraphs (d)-(g) of this section are repeated with respect to the secondary purpose.

(5) Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

(i) Security procedures.

(1) Agency files containing personally identifiable employee medical information shall be

segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

(2) The OSHA Medical Records Officer and the Principal OSHA Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

(3) The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

(4) The protective measures established by this section apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

(5) Intra agency transfer of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

(j) Retention and destruction of records.

(1) Consistent with OSHA records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original recordholder when no longer needed for the purposes for which they were obtained.

(2) Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the OSHA Medical Records Officer. The OSHA Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

(k) Results of an agency analysis using personally identifiable employee medical information. The OSHA Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

(l) Annual report. The OSHA Medical Records Officer shall on an annual basis review OSHA's experience under this section during the previous year, and prepare a report to the Assistant Secretary which shall be made available to the public. This report shall discuss:

(1) the number of written access orders approved and a summary of the purposes for access,

[45 F.R. 54334, August 15, 1980.]

(2) the nature and disposition of employee, collective bargaining agent, and employer written objections concerning OSHA access to personally identifiable employee medical information, and

(3) the nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

(m) Inter-agency transfer and public disclosure.

(1) Personally identifiable employee medical information shall not be transferred to another agency or office outside of OSHA (other than to the Office of the Solicitor of Labor) or disclosed to the public (other than to the affected employee or the original recordholder) except when required by law or when approved by the Assistant Secretary.

(2) Except as provided in paragraph (m)(3) below, the Assistant Secretary shall not approve a request for an interagency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

(i) needs the requested information in a personally identifiable form for a substantial public health purpose,

(ii) will not use the requested information to make individual determinations concerning affected employees which could be to their detriment,

(iii) has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section, and

(iv) satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (*See*, 5 U.S.C. 552a(b); 29 CFR 70a.3).

(3) Upon the approval of the Assistant Secretary, personally identifiable employee medical information may be transferred to:

(i) the National Institute for Occupational Safety and Health (NIOSH) and

(ii) the Department of Justice when necessary with respect to a specific action under the Occupational Safety and Health Act.

(4) The Assistant Secretary shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

(5) The Assistant Secretary shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy (*See*, 5 U.S.C. 552(b)(6); 29 CFR 70.26).

(6) Except as to inter-agency transfers to NIOSH or the Department of Justice, the OSHA Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that OSHA intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the OSHA Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be transferred or disclosed contains direct personal identifiers.

(n) **Effective date.** This section shall become effective on August 21, 1980.

PART 1919

GEAR CERTIFICATION

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AUTHORITY: The provisions of this Part 1919 issued under sec. 41, 44 Stat. 1444, as otherwise noted.

SOURCE: The provisions of this Part 1919 appear at 34 F.R. 3776, Mar. 4, 1969, unless otherwise noted. Redesignated at 36 F.R. 25232, Dec. 30, 1971.

SUBPART A—GENERAL PROVISIONS

1919.1—PURPOSE AND SCOPE

(a) The regulations in this part implement §§ 1918.12 (c) and (d) (3) and 1918.13 of this chapter. They provide procedures and standards governing accreditation of persons by the Occupational Safety and Health Administration, U.S. Department of Labor, for the purpose of certificating vessels' cargo gear and shore-based material handling devices, and the manner in which such certification shall be performed.

(b) Accreditation is not required, and the regulations of this part are not applicable, under the following circumstances:

(1) When cargo gear certification is performed for vessels inspected and certificated under the authority of the U.S. Coast Guard,[1] or for foreign vessels certificated under the requirements of a foreign nation or by persons acceptable for certification purposes by a foreign nation.

(2) When cargo gear certification is performed for shore-based material handling devices under standards established and enforced by the States wherein the devices are located, or by political subdivisions delegated this responsibility by the States, provided such standards meet the requirements of § 1918.13(b) (2) of this chapter.

(c) Persons not required to be accredited for gear certification purposes, as set forth in paragraph (b) of this section, may, nevertheless, apply for and receive accreditation by the Administration. The appropriate subparts of this part shall apply to persons accredited pursuant to this paragraph except insofar as exemptions may be granted.

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[1] Jurisdiction of the U.S. Coast Guard extends to matters within the scope of title 52 of the Revised Statutes and Acts supplementary or amendatory thereto (46 U.S.C. 1–1388, passim); to matters within the regulatory authority of the U.S. Coast Guard under the provisions of the Espionage Act of June 15, 1917, as amended (40 Stat. 220; 50 U.S.C. 191 et seq.; 22 U.S.C. 401 et seq.) or to matters within the regulatory authority of the U.S. Coast Guard under section 4(e) of the Outer Continental Shelf Lands Act of Aug. 7, 1953 (67 Stat. 462; 43 U.S.C. 1333).

1919.2—DEFINITION OF TERMS

(a) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, including special-purpose floating structures not primarily designed for or used as a means of transportation on water.

(b) Except as otherwise noted, "cargo gear", as used in Subparts B through E of this part, includes that gear forming a part of a vessel's equipment which is used for the handling of cargo other than bulk liquids, but does not include gear which is used only for handling or holding hoses, handling ships stores, or handling the gangway, or boom conveyor belt.

(c) With reference to equipment covered by this part—

(1) "Derrick" means:

(i) When applied to vessels cargo handling gear, a mechanical device for lifting, including a boom which is suspended at its head by a topping lift from a mast, king post, or similar structure, controlled in the horizontal plane by vangs, and used either singly or in pairs with married falls;

(ii) When applied to shore-based material handling devices, a mechanical device intended for lifting, with or without a boom supported at its head by a topping lift from a mast, fixed A frame, or similar structure. The mast or equivalent member may or may not be supported by guys or braces. The boom, where fitted, may or may not be controlled in the horizontal plane by guys (vangs). The term includes shear legs.

(2) "Crane" means a mechanical device, intended for lifting or lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. A crane may be a fixed or mobile machine.

(3) "Bulk cargo spout" means a spout which may or may not be telescopic and may or may not have removable sections, but is suspended over the vessel from some overhead structure by wire rope or other means. Such a spout is often used with a "thrower" or "trimming machine". A grain loading spout is an example of those covered by this definition.

(4) "Bulk cargo sucker" means a pneumatic conveyor which utilizes a spout-like device, which may be adjustable vertically and/or laterally, and which is suspended over a vessel from some overhead structure by wire rope or other means. An example of an installation of this nature is the "grain sucker" used to discharge grain from barges.

(d) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or his authorized representative.

(e) "Administration" means the Occupational Safety and Health Administration, U.S. Department of Labor.

(f) "Person" includes any individual, partnership, corporation, agency, association, or organization.

(g) "Competent person" means:

(1) An individual qualified to perform gear certification functions with respect to vessels' cargo handling gear, as specifically set forth in § 1919.37.

(2) An individual qualified under the provisions of Subparts F and G of this part to perform gear certification functions with respect to shore-based material handling devices.

(h) "Ton" means a ton of 2,240 pounds when applied to vessels' cargo handling gear, and a ton of 2,000 pounds when applied to shore-based material handling devices or to shore-type cranes permanently mounted aboard barges or other vessels employed in domestic trade and designed on the basis of the 2,000-pound ton. Capacity ratings may be stated in pounds.

(i) "Nondestructive examination" means examination of structure or parts by electronic, ultrasonic, or other nondestructive examination suitable for the purpose.

SUBPART B—PROCEDURE GOVERNING ACCREDITATION

1919.3—APPLICATION FOR ACCREDITATION

(a) Application.

Any person seeking accreditation shall file an original and duplicate copy of an application for accreditation with the Assistant Secretary of Labor for Occupational Safety and Health, United States Department of Labor, Washington, D.C. 20210, on a form provided by the Administration for this purpose. Each application shall be signed and certified by the applicant and, if the applicant is an agency or organization, by a responsible officer of such agency or organization.

(b) Contents of application.

The application form shall include the following information:

(1) A statement detailing the applicable types of work performed by the applicant in the past, noting the amount and extent of such work performed within the previous three years, listing representative vessels involved, and including representative job orders, if available, or equivalent evidence;

(2) Descriptive details concerning any testing instruments and heat treatment furnaces which are to be used in conducting required tests or heat treatments. Test reports indicating that instruments meet the accuracy standards set forth in this part shall be included;

(3) A list setting forth the ports in which applicant currently conducts his business as well as those in which he proposes to conduct gear certification activities;

(4) A list of the applicant's responsible qualified personnel, both supervisory and managerial and including any surveyors, with resumes of their individual experience in the testing, examination, inspection and heat treatment of cargo gear. Such list shall include any branch office personnel or surveyors appointed to act in the applicant's behalf in any of the ports of the United States: *Provided, however,* That where the submission of individual resumes would be unduly burdensome because of the large number of persons engaged in the applicant's behalf, the applicant, after stating this fact, need only submit a list of its personnel together with a detailed statement of the qualifications upon which the appointment of surveyors is based;

(5) A detailed schedule of the fees proposed to be charged for the various gear certification services;

(6) Evidence of financial stability;

(7) Names of at least three business references who will furnish information regarding work performed by applicant;

(8) Any additional information the applicant deems to be pertinent.

1919.4—ACTION UPON APPLICATION

(a) Upon receipt of an application for accreditation, the Assistant Secretary shall approve or deny the application. The Assistant Secretary may conduct an investigation, which may include a hearing, prior to approving or denying an application. To the extent he deems appropriate, the Assistant Secretary may provide an opportunity to other interested persons to present data and views on the application prior to approval or denial.

(b) Any application which fails to present the information required by the prescribed form may be returned to the applicant with a notation of deficiencies and without prejudice to submission of a new or revised application.

(c) If the application is approved, notice of approval shall be mailed to the applicant. If the application is denied, notice of such denial shall be mailed to the applicant and such denial shall be without prejudice to any subsequent application except where such action is deemed to be in the public interest. In the event an application is denied with prejudice, the provisions of § 1919.9 shall be applicable.

(d) A copy of the notice of accreditation shall be kept on file by applicant at the applicant's place of business.

1919.5—DURATION AND RENEWAL OF ACCREDITATION

The period of accreditation shall not exceed three years. Applications for renewal of accreditation shall be made on the same form as described in § 1919.3. No accreditation shall expire until action on an application for renewal shall have been finally determined, provided that such application has been properly executed in accordance with § 1919.3 and filed with and received by the Assistant Secretary not less than 15 nor more than 60 days prior to the expiration date. A final determination means either the approval or initial denial of the application for renewal. The procedure specified in § 1919.4 shall be applicable to all applications for renewal.

1919.6—CRITERIA GOVERNING ACCREDITATION TO CERTIFICATE VESSELS' CARGO GEAR

(a)

(1) A person applying for accreditation to issue registers and pertinent certificates, to maintain registers and appropriate records, and to conduct initial, annual and quadrennial surveys shall not be accredited unless he is engaged in one or more of the following activities:

(i) Classification of vessels;

(ii) Certification of vessels' cargo gear;

(iii) Shipbuilding or ship repairing, or both insofar as related to work on vessels' cargo handling gear;

(iv) Unit and loose gear testing of vessels' cargo handling gear.

(2) Applicants for accreditation under paragraph (a) (1) of this section for operations in coastal or Great Lakes ports who come within subdivisions (ii) or (iv) shall not be accredited unless they conduct at least 1,500 hours of cargo gear certification work per year.

(b) A person applying for accreditation to carry out tests of loose gear or wire rope, or both, or to carry out heat treatments, and to issue the related certificates, shall be engaged in one or both of the following activities:

(1) Testing of loose gear or wire rope, or both;

(2) Heat treatment of chains and loose cargo gear.

(c)

(1) A person applying for accreditation shall be staffed by individuals technically qualified to conduct the inspections and examinations and to conduct or supervise tests and heat treatments prescribed in this part. Any representatives, agents or surveyors acting on behalf of a person applying for accreditation in ports in which such operations are conducted shall be similarly qualified.

(2) Accreditation to conduct such nondestructive examination as may be a part of any certification activity may be granted to applicants found competent and equipped to carry out this activity.

(d) Except as noted in § 1919.1(c), and unless exemptions are granted under § 1919.10(h), a person applying for accreditation as specified in paragraph (a) of this section shall be prepared to carry out all of the requirements of Subparts C, D, and E, of this part except that loose gear and wire rope tests and heat treatments may be carried out by the manufacturer of the gear concerned or by another person accredited specifically for this purpose.

(e) A person applying for accreditation shall have a satisfactory record of performance, and shall be in sound financial condition.

1919.7—VOLUNTARY AMENDMENT OR TERMINATION OF ACCREDITATION

The accreditation of any person may be voluntarily amended or terminated upon written request filed with the Assistant Secretary.

1919.8—SUSPENSION OR REVOCATION OF ACCREDITATION

The Assistant Secretary may suspend or revoke the accreditation of any person for cause. Except in cases of willfulness or cases in which the public interest requires otherwise, before any accreditation is suspended or revoked, facts or conduct which may warrant such action shall be called to the attention of the person involved in writing and that person shall be afforded an opportunity to achieve or demonstrate appropriate compliance.

1919.9—RECONSIDERATION AND REVIEW

(a) Any person aggrieved by the action of the Assistant Secretary or his authorized representative in denying, granting, suspending or revoking an accreditation under this part may within 15 days after such action, (1) file a written request for reconsideration thereof by the Assistant Secretary of the authorized representative of the Assistant Secretary who made the decision in the first instance, or (2) file a written request for review of the decision by the Assistant Secretary or an authorized representative of the Assistant Secretary, who has taken no part in the action which is the subject for review.

(b) A request for reconsideration shall be granted where the applicant shows that there is additional evidence which may materially affect the decision and that there were reasonable grounds for failure to adduce such evidence in the original proceedings.

(c) Any person aggrieved by the action of the Assistant Secretary or authorized representative of the Assistant Secretary in denying a request for reconsideration may, within 15 days after the denial of such request, file with the Assistant Secretary or his authorized representative a written request for review.

(d) Any person aggrieved by the reconsidered determination of the Assistant Secretary or authorized representative of the Assistant Secretary, may within 15 days after such determination, file with the Assistant Secretary a written request for review.

(e) A request for review shall be granted where reasonable grounds for the review are set forth in the request.

(f) If a request for reconsideration or review is granted, all interested persons shall be afforded an opportunity to present their views.

(g) No cargo gear certification function shall be performed by any person seeking reconsideration or review under this section pending the final decision with respect to such reconsideration or review.

SUBPART C—DUTIES OF PERSONS ACCREDITED TO CERTIFICATE VESSELS' CARGO GEAR

1919.10—GENERAL DUTIES; EXEMPTIONS

(a) Except as noted in § 1919.1 and in paragraph (h) of this section, the requirements set forth in Subparts D and E of this part shall be strictly adhered to in all testing, examinations, inspections, and heat treatments.

(b) Supervision of all testing, examinations, inspections, and heat treatments shall be carried out only by such persons as are listed in the application for accreditation, or subsequent supplements thereto, submitted pursuant to this part.

(c) The certificates issued by an accredited person shall be signed and all register entries made only by an authorized agent of such accredited person. No certification shall be issued until any deficiencies considered by the accredited person to constitute a currently unsatisfactory condition have been corrected. Replacement parts shall be of equal or better quality as original equipment and suitable for the purpose. In the event deficiencies remain uncorrected and no certification may therefore be issued, the accredited person shall inform the nearest District Office of the Administration of the circumstances.

(d) Dynamometers or other recording test equipment owned by an accredited person shall have been tested for accuracy within the six months next preceding application for accreditation or renewal of same. Such test shall be performed with calibrating equipment which has been checked in turn so that indications are traceable to the National Bureau of Standards. A copy of test reports shall accompany the application. Where test equipment is not the property of the accredited person, that person shall not issue any certificate based upon the use of such equipment unless its owner has made available a certificate of accuracy based on the requirements of this paragraph, obtained within 1 year prior to such use and stating the errors of the equipment. Reasonable standards of accuracy shall be met and proof loads adjusted as necessary.

(e) An accredited person shall, upon request, provide the nearest local office of the Administration with advance information as to scheduled testing or of such other functions as are performed and facilitate the Administration's observation of any such activities as it may desire to witness: *Provided, however,* That tests need not be delayed, except when specifically requested by the Administration under unusual circumstances.

(f) All cargo gear registers or certificates issued by an accredited person shall be made on forms prescribed or approved by the Administration.

(g) Unless otherwise instructed by the Assistant Secretary in specific instances, any person accredited under § 1919.6(a) shall accept certificates, relating to loose gear or wire rope tests or to heat treatments which are issued by the manufacturer of the gear concerned, by another person accredited specifically by the Assistant Secretary for this purpose, or by any other person whose certificates are acceptable to the Administration. Such certificates shall either be attached as a part of the vessel's certification or shall be used as the basis for the issuance of the accredited person's own loose gear, wire rope, or heat treatment certificates. In the latter case, the original certificates shall be kept on file by the accredited person as part of the permanent record of the vessel concerned.

(h) In case of practical difficulties or unnecessary hardships, the Assistant Secretary in his discretion may grant exemptions from any provision of Subparts C, D, and E of this part.

1919.11—RECORDKEEPING AND RELATED PROCEDURES CONCERNING RECORDS IN CUSTODY OF ACCREDITED PERSONS

(a) An accredited person shall maintain records of all work performed under Subparts D and E of this part.

(b) An accredited person shall maintain a continuous record of the status of the certification of each vessel issued a register by such person.

(c) The records required in paragraphs (a) and (b) of this section shall be available for examination by the Assistant Secretary.

(d) When annual or quadrennial tests, inspections, examinations, or heat treatments are performed by an accredited person, other than the person who originally issued the vessel's register, such accredited person shall furnish copies of any certificates issued and information as to register entries to the person originally issuing the register.

(e) An accredited person shall inform the nearest local office of the Administration whenever a vessel is initially certificated under these regulations and a register in the prescribed form has been issued.

(f) A copy of each certificate relating to unit tests or thorough examinations, except those issued by the manufacturer and those issued by accredited persons outside of the United States, shall be sent to the nearest local office of the Administration within 10 days after issuance. Such records shall form a part of the Administration's file on the accredited person.

(g) An accredited person shall promptly notify the nearest local office of the Administration with respect to any changes in technical personnel, in fee schedules in geographical areas in which operations are conducted, or other pertinent substantial changes in its organization or operations.

1919.12—RECORDKEEPING AND RELATED PROCEDURES CONCERNING RECORDS IN CUSTODY OF THE VESSEL

(a) A fully completed and up-to-date register shall be kept in the form prescribed or approved by the Administration, giving the particulars required with respect to:

(1) The inspections and thorough examinations required by § 1919.15(a) and (b).

(2) The thorough examinations required by § 1919.15(c).

(3) The thorough examinations required by § 1919.17.

(4) The heat treatment required by § 1919.16 (a) and (b), and § 1919.19.

(b) Certificates in the form prescribed or approved by the Administration shall be kept up-to-date, be attached to the register, and shall contain the particulars required with respect to:

(1) The testing and examinations required by §§ 1919.14, 1919.15(a), and 1919.19.

(2) The heat treatment required by §§ 1919.16 and 1919.19.

(c) The certificates and entries in the register shall be signed by a person qualified under § 1919.37.

(d) Adequate means shall be provided to enable persons examining the register, or any certificate attached thereto, to identify items of cargo gear referred to therein. Small items of gear, such as shackles, shall bear a mark to indicate that they have been initially tested.

(e) Records shall be kept aboard vessels identifying wire rope or articles of loose gear obtained from time to time and required to be certificated under the regulations of this part.

(f) An accredited person shall instruct the vessel's officers, or the vessel's operator if the vessel is unmanned, that the vessel's register and certificates shall be preserved for at least 4 years after the date of the latest entry except in the case of nonrecurring test certificates concerning gear which is kept in use for a longer period, in which event the pertinent certificates shall be retained so long as that gear is continued in use.

(g) In cases where derricks, spouts, suckers, or cranes are mounted permanently aboard barges which remain in domestic inland waters service, the certification documentation shall comply with the provisions of § 1919.90 of this part.

SUBPART D—CERTIFICATION OF VESSELS' CARGO GEAR

1919.13—GENERAL

(a) Except as noted in § 1919.1 and as provided in exemptions under § 1919.10(h), certification performed by accredited persons shall conform to the requirements contained in this subpart.

(b) Safe working loads assigned to assembled units of gear, shall be based on applicable design criteria acceptable to the accredited person. Where no design data on which to base a rating is obtainable, the safe working load ratings assigned shall be based on the owner's information and warranty that those so assigned are correct. Unit test certificates shall state the basis for any such safe working load assignment.

1919.14—INITIAL TESTS OF CARGO GEAR AND TESTS AFTER ALTERATIONS, RENEWALS OR REPAIRS

(a)

(1) Before being taken into use, hoisting machines, fixed gear aboard vessels accessory thereto, and loose gear and wire rope used in connection therewith shall be tested and examined and the safe working load thereof certified in the manner set forth in Subpart E of this part.

(2) Replacement or additional loose gear and wire rope obtained from time to time shall also be tested and examined in the manner set forth in subparagraph (1) of this paragraph. However, the replacement of a component part of an article of loose gear such as sheave, pin, or bushing does not require a new test certificate as long as the new component at least equals in all particulars the part replaced.

(b) In the case of untested gear which has been in use, an initial test in conformance with paragraph (a)(1) of this section shall be carried out: *Provided, however,* That existing standing rigging and wire rope will not be required to be tested but shall be thoroughly examined to ascertain its fitness for continued use in conformance with the requirements of §§ 1919.24 and 1919.25.

(c) In the case of important alterations or renewals of the machinery and gear and also after repairs due to failure of or damage to other than loose components, a test as required in paragraph (a)(1) of this section shall be carried out.

(d) If the operation in which cargo gear is engaged never utilizes more than a fraction of the safe working load rating, the owner may, at his option, have said gear certificated for, and limited in operation to, a lesser maximum safe working load: *Provided, however,* That the gear concerned is physically capable of operation at the original load rating and the load reduction is not for the purpose of avoiding correction of any deficiency.

(e) In no case shall safe working loads be increased beyond the original design limitations unless such increase is based on engineering calculations by or acceptable to the accredited certification agency, and all necessary structural changes are carried out.

1919.15—PERIODIC TESTS, EXAMINATIONS AND INSPECTIONS

After being taken into use, every hoisting machine, all fixed gear aboard vessels accessory thereto and loose gear used in connection therewith shall be tested, thoroughly examined or inspected as follows:

(a) Derricks with their winches and accessory gear, including the attachments, as a unit; and cranes and other hoisting machines with their accessory gear, as a unit, shall be tested and thoroughly examined every four years in the manner set forth in Subpart E of this part.

(b) Derricks, their permanent attachments and any other fixed gear, the dismantling of which is especially difficult, shall be visually inspected every twelve months. In order to facilitate such inspection, all derricks shall be lowered.

(c) All hoisting machines (e.g., cranes, winches, blocks, shackles, and all other accessory gear) not included in paragraph (b) of this section shall be thoroughly examined every 12 months by means of a visual examination, supplemented as necessary by other means, such as a hammer test or with electronic, ultrasonic, or other nondestructive methods, carried out as carefully as conditions permit in order to arrive at a reliable conclusion as to the safety of the parts examined. Particular attention shall be paid to the suitability for continued use of all swivels and the pins and bushings of blocks. If necessary, parts of the machines or gear shall be dismantled. If blocks are disassembled, all shell bolt nuts shall be securely locked upon reassembly.

(d) Where a derrick or crane is mounted on a barge hull, and ballast tanks within the hull are used to facilitate use of the derrick or crane, or uncontrolled free surface may be a factor, each annual inspection or examination, as required, shall include such inspection as is necessary for the purpose of determining the integrity of any internals contributing to stability under conditions of use. The owner shall provide the accredited person with necessary information on any ballasting arrangements required.

(e) Annual inspection or examination, as required, shall include, among other things, examination of the following:

(1) Derrick heel attachment points. Heel pins may, if possible, be examined by nondestructive examination.

(2) Shrouds and stays necessary in the use of the gear, together with attachment points.

(3) Deck fittings for the securing of vangs, topping lifts, and/or preventers.

(4) Means of attachment to the hull of "A" frame or other fixed derrick or crane structure and of mobile types of equipment permanently placed aboard the barge or vessel.

(5) Clamshell buckets or other similar equipment, such as magnets, etc., used in conjunction with a derrick or crane mounted aboard a vessel, with particular attention to closing line wires and sheaves. The accredited person may supplement such examination by requesting any operational tests he may deem appropriate.

(6) Winch and other operating drums for excessive wear or defect.

1919.16—HEAT TREATMENT

(a) All chains (other than bridle chains attached to derricks or masts), rings, hooks, shackles, and swivels made of wrought iron, which are used in hoisting or lowering, shall be annealed in accordance with § 1919.36 at the following intervals:

(1) Half-inch and smaller chains, rings, hooks, shackles, and swivels in general use, at least once every six months; and

(2) All other chains, rings, hooks, shackles, and swivels in general use, at least once every twelve months.

(3) In the case of gear used solely on lifting machinery worked by hand, twelve months shall be substituted for six months in subparagraph (1) of this paragraph and two years for twelve months in subparagraph (2) of this paragraph.

(4) When used in this paragraph, the term "in general use" means used on fifty-two or more days in a year. In any case, however, the period between annealings shall not exceed two years.

(b) Chains, rings, hooks, shackles, and swivels made of material other than wrought iron or steel shall be heat treated when necessary in accordance with § 1919.36(b).

1919.17—EXEMPTIONS FROM HEAT TREATMENT

Gear made of steel, or gear which contains (as in ball bearings swivels), or is permanently attached to (as with blocks) equipment made of materials which cannot be subjected to heat treatment shall be exempt from the requirements of § 1919.16. Such gear, however, shall be thoroughly examined in the manner described in § 1919.15(c).

1919.18—GRACE PERIODS

Grace periods allowed in connection with the requirements of this subpart are as follows:

(a) Annual or six-month requirements—by the end of the voyage during which they become due;

(b) Quadrennial requirements—within six months after the date when due;

(c) Grace periods shall not be deemed to extend subsequent due dates.

1919.19—GEAR REQUIRING WELDING

Chains or other gear which have been lengthened, altered or repaired by welding shall be properly heat treated where necessary, and, before again being put into use, shall be tested and reexamined in the manner set forth in Subpart E of this part.

1919.20—DAMAGED COMPONENTS

(a) Pursuant to § 1919.51(b) of this chapter, any derrick or associated permanent fitting which is deformed in service between surveys shall be subjected to proof test to determine its suitability for continued service. If a proof test indicates that the derrick or associated permanent fitting may be continued in service without repair, a note of the existing deformity shall be made on the test certificate. When, in the opinion of the accredited person, it is unsafe to conduct a proof test with an existing deformity, the derrick or associated permanent fitting shall be replaced or repaired and then subjected to proof tests in accordance with Subpart E of this part.

(b) Any loose gear components which are injured or deformed by a proof load shall be replaced before a certificate is issued.

(c) Any derrick, other fixed installation, or associated permanent fitting which is injured or deformed by a proof load shall be replaced or repaired and another proof load test shall be conducted without damage before a certificate is issued.

1919.21—MARKING AND POSTING OF SAFE WORKING LOADS

(a) The safe working load of the assembled gear and the minimum angle to the horizontal at which this load may be applied shall be plainly marked at the heels of all booms along with the date of the test. Where gear is certificated for use in union purchase, the union purchase safe working load shall also be plainly marked. Any limitations shall be noted in the vessel's papers.

(b) The safe working load shall be marked on all blocks used in hoisting or lowering.

(c) When the capacity of the boom of a crane or derrick has been or will be rated in accordance with the variance of its radius, the maximum safe working loads for the various working angles of the boom and the maximum and minimum radii at which the boom may be safely used shall be conspicuously posted near the controls and visible to the crane operator. Ratings may be stated in pounds. When they are stated in tons of 2,000 pounds, this fact shall be indicated.

1919.22—REQUIREMENTS GOVERNING BRAKING DEVICES AND POWER SOURCES

All types of winches and cranes shall be provided with means to stop and hold the proof load in any position, and the efficiency of such means shall be demonstrated. Electric winches, electrohydraulic winches fitted with the electromagnetic or hydraulic brakes at the winch, or electric cranes shall be equipped so that a failure of the electric power shall stop the motion and set the brakes without any action on the part of the operator. Current for operation of electric winches and cranes during the tests shall be taken from the vessel's circuits. Shore current may be used if it passes through the vessel's main switchboard.

1919.23—MEANS OF DERRICK ATTACHMENT

Appropriate measures shall be taken to prevent the foot of a derrick from being accidently lifted from its socket or support during the test.

1919.24—LIMITATIONS ON USE OF WIRE ROPE

(a) An eye splice made in any wire rope shall have at least three tucks with a whole strand of rope and two tucks with one-half of the wires cut out of each strand. However, this requirement shall not operate to preclude the use of another form of splice or connection which can be shown to be as efficient and which is not prohibited by Part 1918 of this chapter.

(b) Except for eye splices in the ends of wires, each wire rope used in hoisting or lowering, in guying derricks, or as a topping lift, preventer or pendant shall consist of one continuous piece without knot or splice.

(c) Eyes in the ends of wire rope cargo falls shall not be formed by knots and, in single part falls, shall not be formed by wire rope clips.

(d) The ends of falls shall be secured to the winch drums by clamps, U-bolts, shackles or some other equally strong method. Fiber rope fastenings shall not be used.

(e) Wire rope shall not be used for the vessel's cargo gear if in any length of eight diameters, the total number of visible broken wires exceeds 10 percent of the total number of wires, or if the rope shows other signs of excessive wear, corrosion, or defect. Particular attention shall be given to the condition of those sections of wire rope adjacent to any terminal connections, those sections exposed to abnormal wear, and those sections not normally exposed for examination.

1919.25—LIMITATIONS ON USE OF CHAINS

Chains forming a part of vessel's cargo gear shall not be used when, due to stretch, the increase of length of a measured section exceeds five percent, when a link is damaged, or when other external defects are evident. Chains shall not be shortened by bolting, wiring, or knotting.

SUBPART E—CERTIFICATION OF VESSELS: TESTS AND PROOF LOADS; HEAT TREATMENT; COMPETENT PERSONS

1919.26—VISUAL INSPECTION BEFORE TESTS

Before any test under this Subpart E is carried out, a visual inspection of the gear involved shall be conducted and any visibly defective gear shall be replaced or repaired. The provisions of § 1919.15(d) shall be adhered to.

1919.27—UNIT PROOF TESTS—WINCHES, DERRICKS AND GEAR ACCESSORY THERETO

(a) Winches, with the whole of the gear accessory thereto (including derricks, goosenecks, eye plates, eye bolts, or other attachments), shall be tested with a proof load which shall exceed the safe working load as follows:

Safe working load:	*Proof load*
Up to 20 tons	25 percent in excess.
20–50 tons	5 tons in excess.
Over 50 tons	10 percent in excess.

(b) The proof load shall be lifted with the vessel's normal tackle with the derrick at an angle not more than 15 degrees to the horizontal, or, at the designed minimum angle when this is greater, or, when this is impracticable, at the lowest practicable angle. The angle at which the test was made shall be stated in the certificate of test. After the proof load has been lifted, it shall be swung as far as possible in both directions. In applying the proof load, the design factors of the gear concerned will determine whether the load is applied with a single part fall or with a purchase and the certificate of test shall state the means used. Where winches are fitted with mechanical brakes for manual operation they shall be demonstrated to be in satisfactory operating condition.

(c) In the case of heavy lift derrick barges, proof loads shall be applied, except as limited by design and stability considerations, at the maximum and minimum radii for which designed, as well as at any intermediate radius which the surveyor may deem necessary, and shall be swung as far as possible in both directions. Data with respect to each proof load applied shall be entered in the test certificate.

(d) No items of cargo gear furnished by outside sources shall be used as a part of the vessel's gear for the purpose of accomplishing the proof test.

(e) All tests prescribed by this section should in general be carried out by dead load, except that in the case of quadrennial tests, replacements, or renewals, spring or hydraulic balances may be used where dead loads are not reasonably available. However, no exception shall be allowed in the case of gear on new vessels.

(f) The test shall not be regarded as satisfactory unless the indicator remains constant under the proof load for a period of at least 5 minutes.

(g)

(1) The safe working load, determined pursuant to the requirements of this section, shall be applicable only to a swinging derrick. When using two fixed derricks in "union purchase" rigs, the safe working load should generally be reduced. It is recommended that owners obtain union purchase safe working load certification based upon design study and analysis by, or acceptable to, a qualified technical office of an accredited gear certification agency, with the recognition that such determinations are valid only for the conditions contemplated in the analysis.

(2) Where both guys and preventers are fitted, union purchase certification shall state whether the guy or the preventer is the working strength member, when the guy is for slewing only, and when the guy and preventer should share working loads as far as practicable.

(h) When necessary in the proof testing of heavy derricks, the appropriate shrouds and stays shall be rigged.

1919.28—UNIT PROOF TESTS—CRANES AND GEAR ACCESSORY THERETO

(a) Except as noted in paragraph (e) of this section, cranes and other hoisting machines, together with gear accessory thereto, shall be tested with a proof load which shall exceed the safe working load as follows:

Safe working load:	*Proof load*
Up to 20 tons	25 percent in excess.
20–50 tons	5 tons in excess.
Over 50 tons	10 percent in excess.

(b) The proof load shall be lifted and swung as far as possible in both directions. If the jib or boom of the crane has a variable radius, it shall be tested with proof loads, as specified in paragraph (a) of this section, at the maximum and minimum radii. In the case of hydraulic cranes, when due to the limitation of pressure it is impossible to lift a load 25 percent in excess of the safe working load, it will be sufficient to lift the greatest possible load.

(c) Initial proof tests of new cranes shall be made only with a dead load as specified in paragraph (b) of this section.

(d) Initial tests of cranes which have been in service, quadrennial tests, or tests associated with replacements or renewals, may be made with spring or hydraulic balances where dead loads are not reasonably available under the following conditions:

(1) Tests shall be conducted at maximum, minimum, and intermediate radius points, as well as such points in the arc of rotation as meet with the approval of the accredited person.

(2) An additional test shall be conducted with partial load and shall include all functions and movements contemplated in the use of the crane.

(e) In cases where shore-type cranes are mounted permanently aboard barges, the requirements of this Subpart E with respect to unit proof tests and examinations shall not apply and the applicable requirements of Subpart H of this part shall be adhered to with respect to unit proof tests and examinations.

1919.29—LIMITATIONS ON SAFE WORKING LOADS AND PROOF LOADS

The proof loads specified by §§ 1919.27 and 1919.28 shall be adjusted as necessary to meet any pertinent limitations based on stability and/or on structural competence at particular radii. Safe working loads shall be reduced accordingly.

1919.30—EXAMINATIONS SUBSEQUENT TO UNIT TESTS

(a) After satisfactory completion of the unit proof load tests required by §§ 1919.27 and 1919.28, the cargo gear and all component parts thereof shall be given a thorough visual examination, supplemented as necessary by other means, such as a hammer test or with electronic, ultrasonic, or other nondestructive methods, to determine if any of the parts were damaged, deformed, or otherwise rendered unsafe for further use.

(b) When the test of gear referred to in paragraph (a) of this section is being conducted for the first time on a vessel, accessory gear shall be dismantled or disassembled for examination after the test. The sheaves and pins of the blocks included in this test need not be removed unless there is evidence of deformation or failure.

(c) For subsequent tests such parts of the gear shall be dismantled or disassembled after the test as necessary to determine their suitability for continued service.

(d) When blocks are disassembled all shell bolt nuts shall be securely locked upon reassembly.

(e) In carrying out the requirements of this section, replacement shall be required of:

(1) Any swivel found to have excessive tolerance as a result of wear on any bearing surface.

(2) Pins of blocks found to be shouldered, notched, or grooved from wear, in which case, in addition to replacing the pin, sheave bushings shall be examined for suitability for continued use.

1919.31—PROOF TESTS—LOOSE GEAR

(a) Chains, rings, shackles and other loose gear (whether accessory to a machine or not) shall be tested with a proof load against the article equal to that shown in the following table:

Article of gear	*Proof load*
Chain, ring, hook, shackle or swivel	100 percent in excess of the safe working load.
Blocks:	
Single sheave block	300 percent in excess of the safe working load.[1]
Multiple sheave block with safe working load up to and including 20 tons.	100 percent in excess of the safe working load.
Multiple sheave block with safe working load over 20 tons up to and including 40 tons.	20 tons in excess of the safe working load.
Multiple sheave block with safe working load over 40 tons.	50 percent in excess of the safe working load.
Pitched chains used with hand-operated blocks and rings, hooks, shackles or swivels permanently attached thereto.	50 percent in excess of the safe working load.
Hand-operated blocks used with pitched chains and rings, hooks, shackles or swivels permanently attached thereto.	50 percent in excess of the safe working load.

[1] The proof load applied to the block is equivalent to twice the maximum resultant load on the eye or pin of the block when lifting the nominal safe working load defined in (i) below. The proof load is, therefore, equal to four times the safe working load as defined in (i) below or twice the safe working load as defined in (ii) below.

(i) The nominal safe working load of a single-sheave block should be the maximum load which can be safely lifted by the block when the load is attached to a rope which passes around the sheave of the block.

(ii) In the case of a single-sheave block where the load is attached directly to the block instead of to a rope passing around the sheave, it is permissible to lift a load equal to twice the nominal safe working load of the block as defined in (i) above.

(iii) In the case of a lead block so situated that an acute angle cannot be formed by the two parts of the rope passing over it (i.e., the angle is always 90° or more), the block need not have a greater nominal safe working load than one-half the maximum resultant load which can be placed upon it.

(b) In cases where persons accredited to carry out loose gear tests may be retained to conduct tests of special stevedoring gear as described in § 1918.61 (b) of this chapter, which does not form part of a vessel's equipment, such tests shall adhere to the requirements set forth in § 1918.61 (b) (1), (2), and (3) of this chapter.

(c) After being tested as required by paragraph (a) of this section, and before being taken into use, all chains, rings, hooks, shackles, blocks or other loose gear, except as noted in § 1919.32, shall be thoroughly examined, the sheaves and pins of the blocks being removed for this purpose, to determine whether any part has been injured or permanently deformed by the test. Shell bolt nuts shall be securely locked upon reassembly. Defective loose gear components shall be replaced before the certificate is issued.

(d) Any certificate relating to shackles, swivels or strength members of single-sheave blocks which have been restored to original dimensions by welding shall state this fact.

1919.32—SPECIALLY DESIGNED BLOCKS AND COMPONENTS

(a) Blocks and connecting components of an unusual nature which are specially designed and constructed as an integral part of a particular lifting unit and are either permanently affixed or of such design that two or more components must be tested together need not be considered as loose gear for purposes of § 1919.31.

(b) In lieu of the loose gear proof test required by § 1919.31 (a), design data shall be submitted to an accredited certification agency indicating design and material specifications and analysis whereby the designed strength of such gear may be determined.

(c) Subsequent to the test of the lifting unit as a whole, a thorough visual examination shall be made of disassembled parts and an electronic, ultrasonic, or other equally efficient nondestructive examination shall be made of those parts not dismantled to ensure the safe condition of such parts.

1919.33—PROOF TESTS—WIRE ROPE

Wire rope, except as provided in § 1919.14 (b), shall be tested by sample, a piece being tested to destruction, and the safe working load of running ropes, unless otherwise acceptable to the Administration on the basis of design, shall not exceed one-fifth of the breaking load of the sample tested. In the case of running ropes used in gear with a safe working load exceeding 10 tons, the safe working load shall not exceed one-fourth of the breaking load of the sample tested.

1919.34—PROOF TESTS AFTER REPAIRS OR ALTERATIONS

When proof loads are applied after repairs or alterations, all parts of the assembled gear shall be examined as required in §§ 1919.30, 1919.31 (c), or 1919.32 (c), whichever is applicable.

1919.35—ORDER OF TESTS

When both unit and loose gear proof load tests are required, the loose gear test may be carried out after completion of the unit test.

1919.36—HEAT TREATMENT

(a) The annealing of wrought iron gear required by this part shall be accomplished at a temperature between 1100° and 1200° F. and the exposure shall be of between 30 and 60 minutes duration. After being annealed, the gear shall be allowed to cool slowly and shall then be carefully inspected. All annealing shall be carried out in a closed furnace.

(b) When heat treatment of loose gear made of other than wrought iron or steel is recommended by the manufacturer, it shall be carried out in accordance with the specifications of the manufacturer.

1919.37—COMPETENT PERSONS

All gear certification functions shall be performed by competent persons as set forth in the following table:

Functions	*Competent person*
Any testing, examination, inspection, or heat treatment required in United States ports.	Responsible individual, surveyor or other authorized agent of a person accredited by the Administration under the regulations contained in this part.
Any testing, examination, inspection, or heat treatment required while the vessel is in other than United States ports.	Responsible individual, surveyor or other authorized agent of persons recognized by the Commandant of the United States Coast Guard or by a foreign nation whose certification is accepted by the Administration as being in substantial accordance with § 1918.12(a) of this chapter.
Testing, examination and inspection of loose gear or wire rope; heat treatment of loose gear.	Employees or authorized agents of persons accredited specifically by the Administration for this purpose under the regulations contained in this part, or the manufacturer of the gear concerned unless disapproved by the Assistant Secretary.

SUBPART F—ACCREDITATION TO CERTIFICATE SHORE-BASED EQUIPMENT

1919.50—ELIGIBILITY FOR ACCREDITATION TO CERTIFICATE SHORE-BASED MATERIAL HANDLING DEVICES COVERED BY 1918.15 OF THE SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

(a) A person applying for accreditation to carry out certification activities and to issue and maintain the requisite records must be:

(1) A manufacturer of cranes or derricks or of specialized equipment of the type for which accreditation application is made, or a person or organization representing such a manufacturer in a technical capacity; or

(2) Technically experienced and qualified to carry out examinations and/or testing, as applicable, of vessels or shore-based equipment or gear of the type for which accreditation application is made.

(b) The owner of shore-based equipment affected may designate a member of his organization to carry out certification functions respecting the owner's equipment, on the following conditions:

(1) The designee is technically experienced and qualified in the inspection and maintenance or design of the type of equipment involved, aside from employment as an operator only.

(2) The designee has applied to an accredited, nationally operating certification agency and has been granted appointment or equivalent recognition by that agency as a surveyor for the purpose intended.

(3) Certification activities carried out by the designee are cleared through the offices, and are subject to the approval, of the accredited certificating agency. When equipment is found satisfactory for use upon any survey, said equipment may be used pending receipt of notification of such approval or any disapproval.

(4) In cases where equipment is certificated by a person designated by the equipment owner, the cognizant accredited certification agency retains the right to inspect such equipment as desired and convenient in order to ascertain the adequacy of the certification activity performed.

(c) Accreditation to conduct such nondestructive examination as may be a part of any certification activity may be granted to applicants found competent and equipped to carry out this activity.

(d) Unless exemptions are granted at the discretion of the Assistant Secretary in cases of practical difficulties or unnecessary hardship, applicants for accreditation as specified in this section shall be prepared to carry out all necessary functions, except that any requisite wire rope tests, nondestructive examinations, and heat treatments may be carried out by the manufacturer of the gear concerned or by another person accredited specifically for these purposes.

(e) A person applying for accreditation shall have a satisfactory record of relevant experience and performance, and shall be in sound financial condition.

1919.51—PROVISIONS RESPECTING APPLICATION FOR ACCREDITATION, ACTION UPON THE APPLICATION, AND RELATED MATTERS

The provisions of §§ 1919.3, 1919.4, 1919.5, 1919.7, 1919.8, and 1919.9 shall govern accreditation to certificate shore-based material handling devices to the extent applicable.

SUBPART G—DUTIES OF PERSONS ACCREDITED TO CERTIFICATE SHORE-BASED MATERIAL HANDLING DEVICES

1919.60—GENERAL DUTIES, EXEMPTIONS

(a) The requirements of Subpart H of this part shall be strictly observed: *Provided, however,* That in cases of practical difficulties or unnecessary hardship, the Assistant Secretary in his discretion may grant exemptions of variations from any provision in that subpart.

(b) Except as otherwise noted in this part, all functions required by Subpart H of this part shall be carried out by or under the supervision of a person accredited for the purpose or by his authorized representative.

(c) All required unit proof load tests shall be carried out by the use of weights as a dead load. Only where this is not possible may dynamometers or other recording test equipment be used. Any such recording test equipment owned by an accredited person shall have been tested for accuracy within the 6 months next preceding application for accreditation or renewal thereof. Such test shall be performed with calibrating equipment which has been checked in turn so that indications are traceable to the National Bureau of Standards. A copy of test reports shall accompany the accreditation application. Where test equipment is not the property of the accredited person, that person shall not issue any certificate based upon the use of such equipment unless its owner has made available a certificate of accuracy based on the requirements of this paragraph obtained within the year prior to such use, and stating the errors of the equipment. In any event, reasonable standards of accuracy shall be met and proof loads adjusted as necessary.

(d) The qualifications of any person appointed or recognized by any accredited person for the purpose of carrying out certification functions shall meet with the approval of the Assistant Secretary.

(e) Sections 1919.10 (e) and (g) and 1919.11 shall govern, to the extent applicable, persons accredited under Subpart F of this part.

SUBPART H—CERTIFICATION OF SHORE-BASED MATERIAL HANDLING DEVICES

1919.70—GENERAL PROVISIONS

(a) Certification of shore-based material handling devices shall conform to the requirements contained in this subpart, except in cases for which exemptions or variations have been granted by the Assistant Secretary as provided in §§ 1919.50(d) and 1919.60(a).

(b) Any replacements or repairs deemed necessary by the accredited person shall be carried out before application of a proof test.

(c) "Ton" in this subpart means a ton of 2,000 pounds.

(d) When applied to shore-based material handling devices, ratings may be stated in pounds rather than tons. When stated in tons of 2,000 pounds, this fact shall be indicated.

1919.71—UNIT PROOF TEST AND EXAMINATION OF CRANES

(a) Unit proof tests of cranes shall be carried out at the following times:

(1) In the cases of new cranes, before initial use and every 4 years thereafter.

(2) In the cases of uncertificated cranes which have been in use, at the time of initial certification and every 4 years thereafter.

(3) After important alterations and renewals and after repairs due to failure of, or damage to major components.

(b) Unit proof load tests of cranes shall be carried out where applicable with the boom in the least stable direction relative to the mounting, based on the manufacturer's specifications.

(c) Unit proof load tests shall be based on the manufacturer's load ratings for the conditions of use and shall, except in the case of bridge type cranes utilizing a trolley, consist of application of a proof load of 10 percent in excess of the load ratings at maximum and minimum radii, and at such intermediate radii as the certificating authority may deem necessary in the circumstances.[1] Trolley equipped cranes shall be subject to a proof load of 25 percent in excess of the manufacturer's load rating. In cases of foreign manufacture, the manufacturer's specifications shall be subject to approval by the certificating authority as being equivalent to U.S. practice. The weight of all auxiliary handling devices such as, but not limited to, magnets, hooks, slings, and clamshell buckets, shall be considered part of the load.

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[1] The manufacturer's load ratings are usually based upon percentage of tipping loads under some conditions and upon limitations of structural competence at others, as well as on other criteria such as type of crane mounting, whether or not outriggers are used, etc. Some cranes utilizing a trolley may have only one load rating assigned and applicable at any outreach. It is important that the manufacturer's ratings be used.

(d) An examination shall be carried out in conjunction with each unit proof load test. The accredited person, or his authorized representative, shall make a determination as to correction of deficiencies found. The examination shall cover the following points as applicable:

(1) All functional operating mechanisms shall be examined for improper function, maladjustment, and excessive component wear, with particular attention to sheaves, pins, and drums. The examination shall include operation with partial load, in which all functions and movements, including, where applicable, maximum possible rotation in both directions, are performed.

(2) All safety devices shall be examined for malfunction.

(3) Lines, tanks, valves, drains, pumps, and other parts of air or hydraulic systems shall be examined for deterioration or leakage.

(4) Loose gear components, such as hooks, including wire rope and wire rope terminals and connections, shall be checked with particular attention to sections of wire rope exposed to abnormal wear and to sections not normally exposed for examination. The provisions of § 1919.24 shall apply in wire rope examinations. Cracked or deformed hooks shall be discarded and not reused on any equipment subject to the provisions of Part 1918 of this chapter and this Part 1919.

(5) Rope reeving shall comply with manufacturer's recommendations.

(6) Deformed, cracked, or excessively corroded members in crane structure and boom shall be repaired or replaced as necessary.

(7) Loose bolts, rivets, or other connections shall be corrected.

(8) Worn, cracked, or distorted parts affecting safe operation shall be corrected.

(9) Brake and clutch system parts, linings, pawls, and ratchets shall be examined for excessive wear and free operation.

(10) Load, boom angle, or other indicators shall be checked over their full range for any significant inaccuracy. A boom angle or radius indicator shall be fitted.

(11) It shall be ascertained that there is a durable rating chart visible to the operator, covering the complete range of the manufacturer's capacity ratings at all operating radii, for all permissible boom lengths and jib lengths, with alternate ratings for optional equipment affecting such ratings. Necessary precautions or warnings shall be included. Operating controls shall be marked or an explanation of controls shall be posted at the operator's position to indicate function.

(12) Where used, clamshell buckets or other siimlar equipment such as magnets etc., shall be carefully examined in all respects, with particular attention to closing line wires and sheaves. The accredited person may supplement such examination by requesting any operational tests as may be appropriate.

(13) Careful examination of the junction areas of removable boom sections, particularly for proper seating, cracks, deformities, or other defects in securing bolts and in the vicinity of such bolts.

(14) It shall be ascertained that no counterweights in excess of the manufacturer's specifications are fitted.

(15) Such other examination or supplemental functional tests shall be made as may be deemed necessary by the accredited person under the circumstances.

1919.72—ANNUAL EXAMINATION OF CRANES

(a) In any year in which no quadrennial unit proof test is required, an examination shall be carried out by an accredited person or his authorized representative. Such examination shall be made not later than the anniversary date of the quadrennial certification and shall conform with the requirements of § 1919.71 (d).

1919.73—UNIT PROOF TEST AND EXAMINATION OF DERRICKS

(a) Unit proof tests of derricks shall be carried out at the same times as are specified in § 1919.71 (a) for cranes.

(b) Unit proof load tests and safe working load ratings shall be based on the design load ratings at the ranges of boom angles or operating radii. Unit proof loads shall exceed the safe working load as follows:

Safe working load:	*Proof load*
Up to 20 tons	25 percent in excess.
20–50 tons	5 tons in excess.
Over 50 tons	10 percent in excess.

Proof loads shall be applied at the designed maximum and minimum boom angles or radii, or, if this is impracticable, as close to these as practicable. The angles or radii of test shall be stated in the certificate of test. Proof loads shall be swung as far as possible in both directions. The weight of all auxiliary handling devices shall be considered a part of the load.

(c) After satisfactory completion of a unit proof load test, the derrick and all component parts thereof shall be carefully examined in accordance with the requirements of § 1919.71 (d), as far as applicable.

1919.74—ANNUAL EXAMINATION OF DERRICKS

(a) In any year in which no quadrennial unit proof test is required, an examination shall be carried out by an accredited person or his authorized representative. Such annual examination shall be made not later than the anniversary date of the quadrennial certification and shall conform in all applicable respects with § 1919.71 (d).

1919.75—DETERMINATION OF CRANE OR DERRICK SAFE WORKING LOADS AND LIMITATIONS IN ABSENCE OF MANUFACTURER'S DATA

(a) In the event neither manufacturer's data nor design data on safe working loads (including any applicable limitations) are obtainable, the safe working load ratings assigned shall be based on the owner's information and warranty that those so assigned are correct. Unit test certificates shall state the basis for any such safe working load assignment.

1919.76—SAFE WORKING LOAD REDUCTION

(a) If the operation in which equipment is engaged never utilizes more than a fraction of the safe working load rating, the owner of such equipment may, at his option, have the crane or derrick certificated for and operated at a lesser maximum safe working load in keeping with the use and based on radius and other pertinent factors: *Provided, however,* That the equipment concerned is physically capable of operation at the original load rating and the load reduction is not for the purpose of avoiding correction of any deficiency.

1919.77—SAFE WORKING LOAD INCREASE

(a) In no case shall safe working loads be increased beyond the manufacturer's ratings or original design limitations unless such increase meets with the manufacturer's approval. Where the manufacturer's services are not available, or where the equipment is of foreign manufacture, engineering design analysis by, or acceptable to, the accredited certification agency is required. All necessary structural changes shall be carried out.

1919.78—NONDESTRUCTIVE EXAMINATIONS

(a) Wherever it is considered necessary by the accredited person or his authorized representative and wherever it is practical and advisable to avoid disassembly of equipment, removal of pins, etc., examination of structure or parts by electronic, ultrasonic, or other nondestructive methods may be carried out, provided that the procedure followed is acceptable to the Assistant Secretary and the person carrying out such examination is accredited or acceptable to the Assistant Secretary for the purpose.

1919.79—WIRE ROPE

(a) Wire rope and replacement wire rope shall be of the same size, same or better grade, and same construction as originally furnished by the equipment manufacturer or contemplated in the design, unless otherwise recommended by the equipment or the wire rope manufacturer due to actual working condition requirements. In the absence of specific requirements as noted, wire rope shall be of a size and construction suitable for the purpose, and a safety factor of 4 shall be adhered to, and verified by wire rope test certificate.

(b) Wire rope in use on equipment previously constructed and prior to initial certification of said equipment shall not be required to be tested, but shall be subject to thorough examination at the time of initial certification of the equipment.

1919.80—HEAT TREATMENT

(a) Wherever heat treatment of any loose gear is recommended by the manufacturer, it shall be carried out in accordance with the specifications of the manufacturer.

1919.81—EXAMINATION OF BULK CARGO LOADING OR DISCHARGING SPOUTS OR SUCKERS

(a) Those portions of bulk cargo loading or discharging spouts or suckers which extend over vessels, together with any portable extensions, rigging components, outriggers, and attachment points supporting them or any of their components vertically, shall be examined annually. The examination shall be carried out with particular attention to the condition of wire rope and accessories. The equipment shall not be considered satisfactory unless, in the opinion of the accredited person or his authorized representative, it is deemed fit to serve its intended function.

1919.90—DOCUMENTATION

(a) Documents issued respecting a certification function by an accredited person shall be on forms approved for such use by the Assistant Secretary and shall so state.

(b) Such documents shall be issued by the accredited person to the owners of affected equipment, attesting to satisfactory compliance with applicable requirements. The forms used shall contain the following information:

(1) Unit proof tests where required—

(i) Identification of crane or derrick including manufacturer, model number, serial number, and ownership.

(ii) Basis for assignment of safe working load ratings, with the ratings assigned (i.e., whether based on manufacturer's ratings, whether for any specific service, etc.).

(iii) Proof test details noting radii and proof loads, how applied, and, where applicable, direction relative to mounting.

(iv) A statement that the test and associated examination were conducted and all applicable requirements of this subpart are met.

(v) Any necessary remarks or supplementary data, including limitations imposed and the reason thereof.

(vi) Name of accredited person and identification of authorized representative actually conducting test and/or examination.

(vii) Authorized signature of accredited person; date and place of test and/or examination.

(2) Annual examination of cranes or derricks—

(i) Information specified in subparagraph (1) (i), (v), (vi), and (vii) of this paragraph.

(ii) A statement that the required examination has been carried out and that, in the opinion of the accredited person or his authorized representative, the equipment has been found in compliance in all applicable respects with the requirements of this subpart.

(3) Annual examination of bulk cargo loading or discharging spouts or suckers—

(i) Specific identification of equipment.

(ii) A statement that examination has been completed and that, in the opinion of the accredited person or his authorized representative, the equipment meets the criteria of § 1919.81(a).

(iii) Information specified in subparagraph (1) (v), (vi), and (vii) of this paragraph.

(c) Certificates relating to wire rope, whether tested by or under the supervision of the accredited person or by its manufacturer and whether or not issued on the basis of the manufacturer's certificates, shall follow the general format of a wire rope test form approved by the Administration.

(d) Accredited persons shall advise owners of affected equipment of the necessity for maintaining required documentation or acceptable copies thereof available for inspection at or near the worksite of the equipment involved.

(1) Where initial and periodic tests as well as annual examinations are required, documentation available for inspection shall include the latest unit test certificate and any subsequent annual examination certificates, together with wire rope test certificates relating to any replacements since the last unit test or annual examination.

(2) Where only annual examination is required, documentation available for inspection shall include the latest annual examination certificate and wire rope test certificates relating to any wire replaced since the last annual examination.

(3) In the event that heat treatment of any loose gear is recommended by its manufacturer, the latest heat treatment certificate, attesting to compliance with the manufacturer's specifications, shall be part of the available documentation.

(e) No certification shall be issued until any deficiencies considered by the accredited person to constitute a currently unsatisfactory condition have been corrected. Replacement parts shall be of equal or better quality than original equipment and suitable for the purpose. In the event deficiencies remain uncorrected and no certification therefore is issued, the accredited person shall inform the nearest district office of the Administration of the circumstances.

PART 1920

PROCEDURE FOR VARIATIONS FROM SAFETY AND HEALTH REGULATIONS UNDER LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

1920.1 Scope and application.
1920.2 Availability.
1920.3 Application.
1920.4 Approval prerequisite to variation.
1920.5 Priority.
1920.6 Contents of order granting variation.
1920.7 Contents of order denying variation.
1920.8 Publication in Federal Register.
1920.9 Supplementary publication of orders granting or denying variation.
1920.10 Emergency applications.
1920.11 Terminations and extensions.

AUTHORITY: The provisions of this Part 1920 issued under 72 Stat. 835 amending 44 Stat. 1444; 33 U.S.C. 941, and R.S. 161, 5 U.S.C. 301.

SOURCE: The provisions of this Part 1920 appear at 25 F.R. 3025, Apr. 8, 1960, unless otherwise noted. Redesignated at 28 F.R. 1634, Feb. 21, 1963. Further redesignated at 36 F.R. 25232, Dec. 30, 1971.

1920.1—SCOPE AND APPLICATION

The regulations in this part shall govern the availability, effect, and procedure for obtaining variations from safety and health regulations provided in §§ 1915.5 and 1918.5 of this title and any other safety and health regulations issued under the authority of Section 41 of the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1444 as amended, 33 U.S.C. 941).

1920.2—AVAILABILITY

Variations are to be granted only when the Assistant Secretary of Labor for the Occupational Safety and Health Administration determines that the general regulation or particular provisions thereof imposes practical difficulty or unnecessary hardship in a particular application; that the purpose of the general regulation or particular provisions thereof from which variation is sought will be observed by the use of other or different devices; and, that the safety of employees will be equally secured by the other or different devices.

1920.3—APPLICATION

An application requesting a variation from an existing safety or health regulation, or particular provisions thereof may be made by any person or organization affected by such rule or regulation, or particular provisions thereof, or by the lawful agent of such an interested person or organization. The application shall be in triplicate, directed to the Assistant Secretary of Labor for the Occupational Safety and Health Administration, United States Department of Labor, and delivered to the Occupational Safety and Health Administration field office which services the place in which the variation, if granted, would be effective. Every application shall:

(a) Be typewritten or printed in ink;

(b) Appropriately describe the rule or regulation, or particular provisions thereof, from which variation is requested and specifically describe the type of difficulty or hardship arising thereunder and the substitute device for which authorization is sought;

(c) Contain a certification, together with a detailed and comprehensive outline of the facts upon which the certification is based, that:

(1) The variation requested with respect to the rule or regulation, or particular provisions thereof, involved is necessary to avoid practical difficulties or unnecessary hardships;

(2) The purpose of the rule or regulation will be observed by the variation; and

(3) The safety of employees will be equally secured thereby.

(d) State whether a temporary or permanent variation is desired; if temporary, an estimate of the length of time for which the variation is required shall be included; and

(e) Indicate the manner in which the variation is intended to operate.

1920.4—APPROVAL PREREQUISITE TO VARIATION

The application for a variation shall not serve as temporary authority for the variation. Adherence to the general regulations is required unless and until such application is approved by the Assistant Secretary of Labor for the Occupational Safety and Health Administration.

1920.5—PRIORITY

The Assistant Secretary of Labor for the Occupational Safety and Health Administration shall promptly examine every application for the purpose of determining its appropriate priority for the purpose of avoiding or minimizing any delay of affected operations.

1920.6—CONTENTS OF ORDER GRANTING VARIATION

When granting a variation from safety or health regulations or particular provisions thereof, the Assistant Secretary of Labor for the Occupational Safety and Health Administration shall immediately prepare, in triplicate, an order setting forth:

(a) The name and address of the person or organization requesting the variation;

(b) The rule or regulation, or particular provisions thereof, with respect to which the variation is effective;

(c) A description of the conditions under which the variation is permitted, including the extent to which variation from an existing rule or regulation, or particular provisions thereof, will be allowed; and

(d) The period for which the variation shall be effective.

1920.7—CONTENTS OF ORDER DENYING VARIATION

In the event the Assistant Secretary of Labor for the Occupational Safety and Health Administration shall deny an application for variation, he shall prepare, in triplicate, an order setting forth:

(a) The name and address of the person or organization requesting the variation;

(b) The rule or regulation, or particular provisions thereof, from which the application requested variation;

(c) The extent and duration of the variation requested; and

(d) A concise statement of the reasons for denial of the application for variation.

1920.8—PUBLICATION IN FEDERAL REGISTER

Any authorization of a variation by the Assistant Secretary of Labor for the Occupational Safety and Health Administration shall be published in the FEDERAL REGISTER as provided in section 3 of the Administrative Procedure Act (60 Stat. 237; 5 U.S.C. 1002).

1920.9—SUPPLEMENTARY PUBLICATION OF ORDERS GRANTING OR DENYING VARIATION

One copy of the order granting or denying the variation, whichever is issued, shall be mailed to the person or organization requesting the variation at such address as may be specified in the application; one copy shall be kept in the Office of the Occupational Safety and Health Administration Area Supervisor for the area in which the variation, if granted, would be made effective, and shall be open to public inspection; and one copy, together with a properly indexed record of all authorized variations, shall be kept in the Office of the Occupational Safety and Health Administration and shall be open to public inspection.

1920.10—EMERGENCY APPLICATIONS

In any case of extreme urgency, the application for a variation from an existing safety or health regulation, or particular provisions thereof, may be made by telegraph, and shall state the grounds upon which the application is based. This type of application must be confirmed without delay by a written application for a variation which meets the requirements of § 1920.3.

1920.11—TERMINATIONS AND EXTENSIONS

The order granting the application for a variation shall remain in effect for the period specified therein, or until such time as it is terminated in accordance with section 9(b) of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1008(b)). Such terminations shall be published as provided in §§ 1920.8 and 1920.9. Any application for an extended or new variation upon expiration of a temporary one shall be in the form provided in § 1920.3, shall explain the need for extension and specify the extended period, and shall be filed not less than 15 days nor more than 30 days prior to the expiration of the temporary authorization.

PART 1921

RULES OF PRACTICE IN ENFORCEMENT PROCEEDINGS UNDER SECTION 41 OF THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

SUBPART A—APPLICABILITY OF RULES; DEFINITIONS

1921.1 Applicability of rules.
1921.2 Definitions.

SUBPART B—PREHEARING PROCEDURES

1921.3 Complaints.
1921.4 Answer.
1921.5 Motions and requests.
1921.6 Intervention.
1921.7 Stipulations of compliance.
1921.8 Consent findings and order.
1921.9 Prehearing conferences.

SUBPART C—HEARING AND RELATED MATTERS

1921.10 Appearances.
1921.11 Postponement or change of place of hearing.
1921.12 Hearing.

SUBPART D—DECISION AND ORDER

1921.13 Decision of the hearing examiner.
1921.14 Exceptions.
1921.15 Transmittal of record.
1921.16 Decision and order of the Assistant Secretary.

SUBPART E—MISCELLANEOUS

1921.17 Service; copies of documents and pleadings.
1921.18 Witnesses and fees.
1921.19 Depositions.
1921.20 Subpoenas.
1921.21 Hearing examiners.
1921.22 Computation of time.

AUTHORITY: The provisions of this Part 1921 issued under sec. 41, 44 Stat. 1444, 72 Stat. 835, R.S. 161; 5 U.S.C. 301, 33 U.S.C. 941.

SOURCE: The provisions of this Part 1921 appear at 27 F.R. 4165, May 2, 1962, unless otherwise noted. Redesignated at 28 F.R. 7909, Aug. 2, 1963. Further redesignated at 36 F.R. 25232, Dec. 31, 1971.

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SUBPART A—APPLICABILITY OF RULES; DEFINITIONS

1921.1—APPLICABILITY OF RULES

This part provides rules of practice for administrative hearings relating to the enforcement of section 41 of the Longshoremen's and Harbor Workers' Compensation Act and the safety regulations promulgated thereunder which are published in Parts 1915 and 1918 of this subtitle. This part applies only to proceedings held under section 41(b)(5) of the Act. It does not apply to any other administrative proceedings held under section 41 of the Act.

1921.2—DEFINITIONS

(a) "Act" means the Longshoremen's and Harbor Workers' Compensation Act.

(b) "Chief Hearing Examiner" means the Chief Hearing Examiner, United States Department of Labor, Washington D.C. 20210.

(c) "Respondent" means the person or organization proceeded against.

(d) "Assistant Secretary" means the Assistant Secretary of Labor for the Occupational Safety and Health Administration, United States Department of Labor.

SUBPART B—PREHEARING PROCEDURES

1921.3—COMPLAINTS

(a) Issuance.

The Deputy Solicitor of Labor shall institute enforcement proceedings by issuing a complaint and causing the complaint to be served upon the respondent.

(b) Contents.

The complaint shall contain a clear and concise factual statement sufficient to inform the respondent with reasonable definiteness of the types of acts or practices alleged to have occurred and to violate section 41 of the Act or the provisions of Parts 1915 and 1918 of this subtitle.

(c) Amendments.

At any time prior to the close of the hearing, the complaint may be amended in the discretion of the hearing examiner and on such terms as he may approve.

(d) Notice of hearing.

The hearing examiner shall notify the parties of the time and place for a hearing within 10 days after the service of the complaint.

1921.4—ANSWER

(a) Filing and service.

Within 14 days after the service of the complaint, the respondent shall file an answer with the Chief Hearing Examiner. The answer shall be signed by the respondent or his attorney.

(b) Contents; failure to file.

The answer shall

(1) Contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny, each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or

(2) State that the respondent admits all of the allegations of the complaint. The answer may contain a waiver of hearing. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(c) Procedure upon admission of facts.

The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission of facts, the hearing examiner without further hearing shall prepare his decision in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint. The parties shall be given an opportunity to file exceptions to his decision, and to file briefs in support of the exceptions.

1921.5—MOTIONS AND REQUESTS

Motions or requests shall be filed with the Chief Hearing Examiner, except that those made during the course of the hearing shall be filed with the hearing examiner or shall be stated orally and made part of the transcript. Each motion or request shall state the particular order, ruling, or action desired, and the grounds therefor. The hearing examiner is authorized to rule upon all motions or requests filed or made prior to the filing of his report.

1921.6—INTERVENTION

At any time after the institution of proceedings and before the hearing examiner makes his decision, the hearing examiner may, upon petition in writing and for good cause shown, permit any interested person, including an employer, employee, labor or trade organization, or Federal or State agency, to intervene therein. The petition shall state with precision and particularity: (a) The petitioner's relationship to the matters involved in the proceedings, (b) the nature of any material he intends to present in evidence, (c) the nature of any argument he intends to make, and (d) any other reason he should be allowed to intervene.

1921.7—STIPULATIONS OF COMPLIANCE

At any time prior to the issuance of a complaint in the proceeding, the Assistant Solicitor in charge of trial litigation may in his discretion, enter into stipulations with the prospective respondent, whereby the latter admits the material facts and agrees to discontinue the acts or practices which are intended to be set up as violative of the Act or Parts 1915 and 1918 of this subtitle. Such stipulations shall be admissible as evidence of such acts and practices in any subsequent proceeding in law or equity or under these regulations against such person.

1921.8—CONSENT FINDINGS AND ORDER

(a) General.

At any time after the issuance of a complaint and prior to the reception of evidence in any proceeding, the respondent may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the hearing examiner, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) Content.

Any agreement containing consent findings and an order disposing of a proceeding shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the hearing examiner or the Assistant Secretary of Labor; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Submission.

On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the hearing examiner for his consideration; or

(2) Inform the hearing examiner that agreement cannot be reached.

(d) Disposition.

In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the hearing examiner within 30 days thereafter shall accept such agreement by issuing his decision based upon the agreed findings.

1921.9—PREHEARING CONFERENCES

(a) Upon his own motion or the motion of the parties, the hearing examiner may direct the parties or their counsel to meet with him for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

(3) Stipulations, admissions of fact and of contents and authenticity of documents;

(4) Limitation of the number of expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

SUBPART C—HEARING AND RELATED MATTERS

1921.10—APPEARANCES

(a) Representation.

The parties may appear in person or by counsel. The term "counsel" means a member in good standing of the bar of a Federal Court or of the highest court of any State or Territory of the United States.

(b) Failure to appear.

In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present his evidence in whole or such portion thereof sufficient to make a prima facie case before the hearing examiner. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the hearing examiner's decision and to file exceptions thereto.

1921.11—POSTPONEMENT OR CHANGE OF PLACE OF HEARING

If in the judgment of the hearing examiner convenience or necessity so requires, he may postpone the time or change the place of the hearing.

1921.12—HEARING

(a) Order of proceeding; burden of proof.

Except as may be determined otherwise by the hearing examiner, counsel supporting the complaint shall proceed first at the hearing. The Assistant Solicitor of Labor in charge of trial litigation, supporting the complaint, shall have the burden of proof. The burden of proof shall be satisfied by a preponderance of the evidence.

(b) Evidence.

(1) In general. The testimony of witnesses shall be upon oath or affirmation administered by the hearing examiner and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The hearing examiner shall exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(2) Objections. If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the hearing examiner may be relied upon subsequently in the proceeding.

(3) Exceptions. Formal exception to an adverse ruling is not required.

(c) Official notice.

Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice and also concerning which the Department by reason of its functions is presumed to be expert: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the hearing examiner's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(d) Oral argument before the hearing examiner.

Oral argument before the hearing examiner may be allowed. However, such argument may be limited by the hearing examiner to any extent that he finds necessary for the expeditious disposition of the proceeding.

(e) Transcript.

Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement between the Assistant Secretary of Labor and the reporter.

SUBPART D—DECISION AND ORDER

1921.13—DECISION OF THE HEARING EXAMINER

(a) Filing of transcript of evidence.

As soon as practicable after the close of the hearing, the reporter shall transmit to the Chief Hearing Examiner the copies of the transcript of the testimony and the exhibits introduced in evidence at the hearing except such copies of the transcript and exhibits as are forwarded to the hearing examiner.

(b) Proposed findings of fact, conclusions, and orders.

Within 10 days after receipt of notice that the transcript of the testimony has been filed or such additional time as the hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and order, together with a supporting brief including the reasons for any proposals. Such proposals shall be served upon all parties and shall contain adequate references to the record and authorities relied upon.

(c) Decision of the hearing examiner.

Within a reasonable time after the termination of the time allowed for the filing of proposed findings of fact, conclusions of law, and orders, or after the date of submission of an agreement containing consent findings and order, the hearing examiner shall prepare his decision, which shall become the decision of the Assistant Secretary 20 days after service thereof unless exceptions are filed thereto, as provided in § 1921.14 except in cases dealt with in § 1921.8(b). Except in cases under § 1921.8 (b) the decision of the hearing examiner shall include a statement of

(1) Findings and conclusions, with reasons and bases therefor, upon each material issue of fact, law, or discretion presented on the record, and

(2) An appropriate order. Except in cases under § 1921.8(b), the decision of the hearing examiner shall be based upon a consideration of the whole record and supported by reliable, probative, and substantial evidence and upon the basis of the preponderance of the evidence.

1921.14—EXCEPTIONS

Within 20 days after the date of the decision of the hearing examiner, the parties may file exceptions thereto with supporting reasons. Any party who desires to take exception to any matter set out in that decision shall transmit his exceptions in writing to the Chief Hearing Examiner, referring to the specific findings of fact, conclusions of law, or order excepted to, and the specific pages of transcript relevant to the exceptions, and suggesting corrected findings of fact, conclusions of law, or order.

1921.15—TRANSMITTAL OF RECORD

Immediately following the period allowed for filing exceptions, the hearing examiner shall transmit the record of the proceeding to the Assistant Secretary of Labor. The record shall include: the pleadings, motions, and requests filed, and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions of law, and orders, and supporting reasons, as may have been filed in connection with the hearing; the hearing examiner's decision; and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

1921.16—DECISION AND ORDER OF THE ASSISTANT SECRETARY OF LABOR

(a) Upon the basis of and after due consideration of the whole record, the Assistant Secretary of Labor shall render his decision, which shall adopt, modify, or set aside the findings, conclusions, and order contained in the decision of the hearing examiner, and shall include a statement of the reasons or bases for the action taken. With respect to the findings of fact, the Assistant Secretary of Labor shall upset only those findings that are clearly erroneous. Copies of the decision and order shall be served upon the parties.

(b) When a final order of the Assistant Secretary of Labor issued pursuant to § 1921.13 (c) of this part or paragraph (a) of this section has been in force for 2 years or more, a party may file with the Assistant Secretary of Labor a petition for modification or vacation of the order. Such petition must be in writing, and must be based upon satisfactory compliance with the order during the 24 months immediately preceding the filing thereof and upon such changes in conditions and circumstances as to demonstrate, if established, that a continuation of the order in full force and effect is no longer required to assure satisfactory compliance with the regulations under the order. Such changes in conditions and circumstances as are relied upon must be expressly set forth together with the reasons why petitioner believes relief is justified and the precise nature of the relief sought. The petition may be supported by affidavits as to matters of fact.

(c) If, after such investigation as the Assistant Secretary of Labor deems appropriate, in his judgment sufficient cause has been shown to justify the relief requested, he will enter an order granting relief. If in his judgment, sufficient cause has not been shown he shall so notify petitioner, who may then in writing request a hearing. Upon receipt of such request the Assistant Secretary of Labor will refer the petition with its supporting documents and the request to the Chief Hearing Examiner who will assign the matter for a hearing to be held on not less than 10 days notice at a time and place to be set by the hearing examiner. The Deputy Solicitor of Labor may file a pleading and otherwise appear in opposition to the petition. The hearing will be subject to all of the provisions of §§ 1921.9 through 1921.22 of this part.

[31 F.R. 11144, Aug. 23, 1966.]

SUBPART E—MISCELLANEOUS

1921.17—SERVICE; COPIES OF DOCUMENTS AND PLEADINGS

(a) Manner of service.

Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing a copy to the last known address. If the person upon whom service is made by mail resides 500 miles or more from the party effecting service, such mailing must be by airmail. When a party is represented by an attorney the service may be upon the attorney.

(b) Proof of service.

A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be proof of the service of the pleading or other document.

(c) Service upon Department, number of copies of pleading or other documents.

An original and three copies of all pleadings and other documents shall be filed with the Department of Labor, whether to the Assistant Solicitor in charge of trial litigation, the hearing examiner, or the Assistant Secretary, as the case may be.

1921.18—WITNESSES AND FEES

Witnesses subpoenaed by any party shall be paid the same fees and mileage as are paid for like services in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

1921.19—DEPOSITIONS

(a) When, how, and by whom taken.

For good cause shown, the testimony of any witness may be taken by deposition in any proceeding, when a complaint has been filed, whether at issue or not. Depositions may be taken orally or upon written interrogatories before any person designated by the hearing examiner and having power to administer oaths.

(b) Application.

Any party desiring to take the deposition of a witness shall make application in writing to the hearing examiner, setting forth the reasons why such deposition should be taken; the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken; the name and address of each witness; and the subject matter concerning which each witness is expected to testify.

(c) Notice.

Such notice as the hearing examiner shall order shall be given for the taking of a deposition, but this shall not be less than 5 days' written notice when the deposition is to be taken within the United States and not less than 15 days' written notice when the deposition is to be taken elsewhere.

(d) Taking and receiving in evidence.

Each witness testifying upon deposition shall be sworn, and the adverse party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

1921.20—SUBPOENAS

All applications for subpoenas ad testificandum and subpoenas duces tecum shall be made in writing to the hearing examiner. Application for subpoenas duces tecum shall specify as exactly as possible the documents to be produced, showing their general relevancy and reasonable scope.

1921.21—HEARING EXAMINERS

(a) Who presides.

All hearings shall be presided over by a hearing examiner appointed under section 11 of the Administrative Procedure Act.

(b) How assigned.

The presiding hearing examiner shall be designated by the Secretary or the Chief Hearing Examiner.

(c) Powers.

Hearing examiners shall have all powers necessary to the conduct of fair and impartial hearings, including the following:

(1) To administer oaths and affirmations;

(2) To issue subponeas upon proper applications as provided in § 1921.20;

(3) To rule upon offers of proof and receive relevant evidence;

(4) To take or cause to be taken depositions and to determine their scope;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel therein;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To consider and rule upon procedural requests;

(8) To make and file decisions in conformity with this part.

(9) To take any action authorized by the rules in this part or in conformance with the Administrative Procedure Act.

(d) Consultation.

The hearing examiner shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

(e) Disqualification of hearing examiners.

(1) When a hearing examiner deems himself disqualified to preside in a particular proceeding, he shall withdraw therefrom by notice on the record directed to the Chief Hearing Examiner.

(2) Whenever any party shall deem the hearing examiner for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Chief Hearing Examiner a motion to disqualify and remove such hearing examiner, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Hearing Examiner shall rule upon the motion.

(f) Contemptuous conduct; failure or refusal of a witness to appear or answer.

In the event of contemptuous conduct, including the failure or refusal of a witness to appear at any hearing or to answer any question which has been ruled to be proper, the hearing examiner may take any action reasonable under 41 CFR 50-203.8(1), promulgated under section 5 of the Act of June 30, 1936 (41 U.S.C. 39).

1921.22—COMPUTATION OF TIME

Sundays and holidays shall be included in computing the time allowed for filing any document or paper under this part. When such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.

PART 1922

INVESTIGATIONAL HEARINGS UNDER SECTION 41 OF THE LONGSHOREMEN'S HARBOR WORKERS' COMPENSATION ACT

1922.1 Definitions.
1922.2 Purpose and scope.
1922.3 Composition of the Board.
1922.4 Responsibilities of the Board; voting.
1922.5 Notice of investigational hearings.
1922.6 Investigational hearings.

AUTHORITY: The provisions of this Part 1922 issued under R.S. 161, sec. 41, 44 Stat. 1444, 72 Stat. 835; 5 U.S.C. 301; 33 U.S.C. 941.

SOURCE: The provisions of this Part 1922 appear at 27 F.R. 4168, May 2, 1962, unless otherwise noted. Redesignated at 28 F.R. 7909, Aug. 2, 1963. Further redesignated at 36 F.R. 25232, Dec. 30, 1971.

1922.1—DEFINITIONS

(a) "Act" means the Longshoremen's and Harbor Workers' Compensation Act.

(b) "Board" means the Board of Investigation.

(c) "OSHA" means the Occupational Safety and Health Administration, United States Department of Labor.

(d) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

(e) "Injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury.

1922.2—PURPOSE AND SCOPE

Whenever any serious injury results from the employments covered by the Act or whenever it is otherwise appropriate, the Assistant Secretary of Labor may appoint a Board of Investigation to hold an investigational hearing during the course of any investigation made under section 41 of the Act. This part prescribes the manner in which any investigational hearings shall be conducted. This part does not apply to any adjudicative proceedings held under section 41(b)(5) of the Act.

1922.3—COMPOSITION OF THE BOARD

The Board shall be composed of three members appointed by the Assistant Secretary of Labor, one of whom shall be designated as Chairman. All members shall be employees of the United States Department of Labor, and shall have experience in the field of maritime safety.

1922.4—RESPONSIBILITIES OF THE BOARD; VOTING

(a) Determinations and recommendations.

To the extent possible, the Board shall determine the facts, conditions, and circumstances relating to any injury or condition which is the subject of investigation, the probable cause thereof, and shall recommend measures which will provide the best means of preventing future injuries or conditions of similar character. The determinations and recommendations shall be made after hearing such witnesses and receiving such documents and other data relating to the subject or subjects of investigation as may be found available as a result of preliminary investigation.

(b) Report.

Upon completion of the investigational hearing, the Board shall file a report of its investigation with the Assistant Secretary. The report shall contain the determinations and recommendations required under paragraph (a) of this section. Any member may file a separate report in order to express determinations, recommendations, or reasons for determinations or recommendations which differ from those of a majority of the Board.

(c) Voting.

Actions of the Board, including the determinations and recommendations required under paragraph (a) of this section, shall require a vote of a majority of its members.

1922.5—NOTICE OF INVESTIGATIONAL HEARINGS

The Chairman of the Board shall give reasonable notice of the time and place of any investigational hearing to any person whose conduct is or may be pertinent to the subjects of investigation; to any prospective witnesses; and to any Federal or State agency engaged in similar investigative work.

1922.6—INVESTIGATIONAL HEARINGS

The Chairman shall regulate the course of the hearing; dispose of procedural requests, objections, and related matters; and confine the hearing to the matters for which the Board is responsible. In the performance of these duties, the Chairman may be assisted by counsel assigned by the Solicitor of Labor. In the discretion of the Board, the hearing may be stenographically reported. When the hearing is so reported, copies of the transcript may be obtained upon such terms as the Chairman may provide.

PART 1923

SAFETY AND HEALTH PROVISIONS FOR FEDERAL AGENCIES

Deleted. See 37 F. R. 23263, November 1, 1972.

PART 1924

SAFETY STANDARDS APPLICABLE TO WORKSHOPS AND REHABILITATION FACILITIES ASSISTED BY GRANTS

1924.1—APPLICABLE SAFETY STANDARDS

The safety standards provided in 41 CFR Part 50-204 shall have effect to the extent applicable to any workshop or rehabilitation facility assisted by a grant pursuant to section 12 or section 13 of the Vocational Rehabilitation Act Amendments of 1965, 79 Stat. 1284, 1286.

(Sec. 12(b), 13(e), 79 Stat. 1284, 1288; 29 U.S.C. 41a, 41b) [32 F.R. 3052, Feb. 18, 1967. Redesignated, 32 F.R. 4170, Mar. 17, 1967, and further redesignated at 36 F.R. 25232, Dec. 30, 1971.]

PART 1925

SAFETY AND HEALTH STANDARDS FOR FEDERAL SERVICE CONTRACTS

1925.1 Scope and application.
1925.2 Safety and health standards.
1925.3 Records.

AUTHORITY: The provisions of this Part 1925 issued under 79 Stat. 1034; 5 U.S.C. 301, 41 U.S.C. 351, et. seq.

1925.1—SCOPE AND APPLICATION

(a) The McNamara-O'Hara Service Contract Act of 1965 (79 Stat. 1034, 41 U.S.C. 351, et seq.) requires that every contract entered into by the United States or the District of Columbia in excess of $2,500 (except as provided in section 7 of the Act), the principal purpose of which is to furnish services in the United States through the use of service employees, must contain, among other provisions, a stipulation that "no part of the services covered by this Act will be performed in buildings or surroundings or under working conditions, provided by or under the control or supervision of the contractor or any subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish the services." This Part 1925 expresses certain minimum safety and health standards which will be applied in the administration and enforcement of the Act to determine whether services covered by the Act are being, or have been, performed in compliance with its safety and health requirements.

(b)

(1) Investigators conducting investigations and all officers of the Department of Labor evaluating, reviewing and analyzing investigations, as well as officers of the Department determining whether there are or have been violations of the safety and health requirements of the Service Contract Act of 1965 or any contract subject thereto and the terms on which there may be a settlement of issues arising from an investigation without resort to administrative or judicial litigation, will consider a failure to comply with the safety and health measures provided in § 1925.2 to result in working conditions which are "unsanitary or hazardous or dangerous to the health or safety of service employees" within the meaning of section 2(a)(3) of the Act and the contract stipulation it requires.

(c) [Reserved]

(d) The standards expressed in this Part 1925 are for application to ordinary employment situations, and do not preclude proof or recognition of the necessity for additional standards in employment situations of extraordinary hazard. Neither do the standards expressed in this Part 1925 purport to cover all of the working condiitons which are unsanitary or hazardous or dangerous to the health or safety of service employees. Other working conditions may be found to be unsanitary or hazardous or dangerous to the health or safety of such employees on evidence to that effect.

(e) Compliance with the standards expressed in this Part 1925 will not relieve anyone from any obligation he may have to comply with any stricter standard, such as State or local law or ordinance or collective bargaining agreement.

[32 F.R. 21036, Dec. 30, 1967, as amended at 36 F.R. 9866, May 29, 1971. Redesignated at 36 F.R. 25232, Dec. 30, 1971.]

1925.2—SAFETY AND HEALTH STANDARDS

Every contractor and subcontractor shall comply with the safety and health standards published in 41 CFR Part 50–204, including any matters incorporated by reference therein.

[36 F.R. 9866, May 29, 1971. Redesignated at 36 F.R. 25232, Dec. 30, 1971.]

1925.3—RECORDS

Every contractor or subcontractor shall comply with the recordkeeping requirements of 29 CFR Part 1904.

[40 F.R. 3593, January 23, 1975.]

PART 1950

DEVELOPMENT AND PLANNING GRANTS FOR OCCUPATIONAL SAFETY AND HEALTH

1950.1 Purpose and scope.
1950.2 Definitions.
1950.3 Manner of submitting application.
1950.4 Where to submit applications.
1950.5 Action upon application.
1950.6 Federal share; matching requirements.
1950.7 Priorities in grant awards; criteria for unequal grants.
1950.8 Grant agreement.
1950.9 General conditions.
1950.10 Nondiscrimination.
1950.11 Records, reports and audits.
1950.12 Termination of grants.
1950.13 Delegation of authority.

AUTHORITY: The provisions of this Part 1950 issued under secs. 8(g), 23, 84 Stat. 1600, 1613; 29 U.S.C. 657.

SOURCE: The provisions of this Part 1950 appear at 36 F.R. 8864, May 14, 1971, unless otherwise noted.

1950.1—PURPOSE AND SCOPE

(a) The rules in this part contain the procedures for making grants to the several States for the purposes listed in section 23(a) (1), (2), and (3) and section 23(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590).

(b) Under section 23(a) of the Act, the Secretary is authorized to make grants to the States which have designated a State agency under section 18 of the Act to assist them—

(1) In identifying their needs and responsibilities in the area of occupational safety and health;

(2) In developing State plans under section 18; or

(3) In developing plans for—

(i) Establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(ii) Increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(iii) Otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of the Act.

(c) Under section 23(b) of the Act, the Secretary is authorized to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in section 23(a).

1950.2—DEFINITIONS

As used in this part and in grant instruments entered into pursuant to this part:

(a) "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(b) "Assistant Secretary" means the Assistant Secretary for Occupational Safety and Health.

(c) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970.

1950.3—MANNER OF SUBMITTING APPLICATION

(a) An application for a grant under this part shall be submitted in such manner and at such time as the Secretary may prescribe.[1] The application shall contain a budget and narrative plan of the manner in which the applicant intends to carry out the planning or development project and to carry out the provisions of this part, as more particularly described in the instructions for a grant.[1]

(b) An application must be submitted by a State agency designated by the Governor of a State.

(c) Applications must be submitted before May 1, 1973.

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[1] Instructions may be obtained from the Regional Administrators of the Occupational Safety and Health Administration or the Regional Directors of the Bureau of Labor Statistics.

1950.4—WHERE TO SUBMIT APPLICATIONS

(a) Applications for grants under section 23(a)(3)(A) of the Act for the development of plans to establish systems for the collection of information concerning the nature and frequency of occupational injuries and diseases shall be submitted to the Commissioner of the Bureau of Labor Statistics, U.S. Department of Labor, Washington, D.C. 20210.

(b) Applications for grants for the remaining purposes of section 23(a) must be submitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210. These include applications for grants to assist the States—

(1) In identifying their needs and responsibilities in the area of occupational safety and health;

(2) In developing State plans under section 18 of the Act;

(3) In developing plans (i) to increase the expertise and enforcement capabilities of the State's personnel engaged in occupational safety and health programs; or (ii) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of the Act.

(c) Applications for grants under section 23(b) of the Act for experimental and demonstration projects consistent with the objectives of section 23(a)(3)(A) of the Act shall be submitted to the Commissioner of the Bureau of Labor Statistics. Applications for grants under section 23(b) of the Act for experimental and demonstration projects consistent with the objectives of the remainder of the provisions of section 23(a) shall be submitted to the Assistant Secretary for Occupational Safety and Health.

1950.5—ACTION UPON APPLICATION

(a) The Assistant Secretary or the Commissioner, as the case may be, shall proceed to pass upon each application for a grant within a reasonable time following its receipt. In passing upon each application, the Assistant Secretary or the Commissioner, as the case may be, shall consult with a representative of the Secretary of Health, Education, and Welfare designated for this purpose. Any recommendations of such representative as to approval or disapproval of an application shall be reduced to writing, and due regard shall be given to any such recommendations. In addition, the Commissioner shall from time to time consult with the Assistant Secretary to assure uniform application of section 23 of the Act and the provisions of this part.

(b) The applicant shall be notified of action taken on the application. The notice shall be accompanied by a brief statement of the grounds for any denial, except where there is an affirmation of a previous denial. In the event of a denial, the applicant may within a reasonable time request the Assistant Secretary or the Commissioner to reconsider his application. Such request shall be in writing. The request shall be considered with reasonable dispatch by the Assistant Secretary or the Commissioner. In his discretion the Commissioner or the Assistant Secretary may afford the applicant an opportunity for informal oral presentation concerning the request for reconsideration.

(c) It is the policy of the Secretary of Labor to encourage the submission of applications. To the extent practicable, the Commissioner and the Assistant Secretary shall provide technical assistance to any applicant in the preparation of an application and in the correction of any defective application.

(d) If a grant is made, the initial award shall set forth the amount of funds granted, and shall specify the period for which it is contemplated. It may provide that additional funds will be added at a later time, provided the activity is satisfactorily carried out and appropriations are available. Grantees may also be required to make separate application for continued support.

(e) Neither the approval of any project nor a grant award shall commit or obligate the Commissioner or the Assistant Secretary in any way to make any additional, supplemental, continuation or other award with respect to an approved project or portion thereof. But this provision shall not preclude the Commissioner or the Assistant Secretary from making upward adjustments to actual costs as to amounts awarded on a provisional basis, as provided in paragraph (d) of this section.

1950.6—FEDERAL SHARE; MATCHING REQUIREMENTS

(a) Federal funds will be granted on the basis of project applications, and may be used to meet not more than 90 percent of the cost of the project.

(b) The non-Federal participation may be derived from a variety of sources, including (1) new State appropriations, and (2) existing funds and time of personnel used by the grantee agency for the project. Voluntary services or space donated to the State or the project by a third party may not be included as a grantee contribution. Grantee funds or services derived from other Federal funds may not be used to match the Federal funds available for the objectives in subsections (a) and (b) of section 23 of the Act.

1950.7—PRIORITIES IN GRANT AWARDS; CRITERIA FOR UNEQUAL GRANTS

(a) In the award of grants under subsections (a) and (b) of section 23 of the Act, priority shall be assigned to grants under section 23(a)(2) for the development of State plans under section 18 of the Act.

(b) In the event the Federal share for each grant under section 23(a) or section 23(b) of the Act for all States is not the same, the differences among the States shall be on the basis of objective criteria which may be relevant to the type of grant involved, such as the population of a State, its civilian labor force, or costs in developing State standards for which there is an urgent need on the basis of priorities similar to those required of Federal standards under section 6(g) of the Act. The criteria which are used shall be described briefly in the making of the grant.

1950.8—GRANT AGREEMENT

Each agreement shall be evidenced by a written notice of the grant awarded. The notice and any appendices thereto shall contain a statement of the objectives of the grant and the specific conditions applicable thereto. The notice of the application for the grant and the provisions of this part shall comprise the grant agreement.

1950.9—GENERAL CONDITIONS

(a) None of the funds granted by the Secretary or the matching funds of the State shall be used for any purpose inconsistent with the grant agreement.

(b) The State agency shall be considered to have an equitable obligation to administer the grant in the manner consistent with its objectives and conditions.

(c) The grant shall be administered in a manner consistent with the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201–4233).

(d) In no case shall a grant agreement permit payment of the following:

(1) Cost of construction of buildings;

(2) Depreciation of existing buildings;

(3) Dues to societies, organizations, or federations;

(4) Entertainment costs;

(5) Consultants or other personnel paid from other Federal grant funds.

1950.10—NONDISCRIMINATION

The State shall comply with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance and to the implementing rules issued by the Secretary of Labor with the approval of the President (29 CFR Part 31).

1950.11—RECORDS, REPORTS AND AUDITS

The State agency shall maintain records and submit reports to the Regional Administrator in a manner consistent with the pertinent instructions.[1] Representatives of the Secretary and the Comptroller General of the United States may conduct audits and inspections of State agencies receiving Federal funds under this part.

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[1] Instructions may be obtained from the Regional Administrators of the Occupational Safety and Health Administration.

1950.12—TERMINATION OF GRANTS

(a) Whenever the Assistant Secretary or the Commissioner finds that a State agency has failed in a material repect to comply with the terms of the grant agreement, he may, on reasonable notice and opportunity for hearing to the State agency, withhold further payments, and take such other action, including the termination of the grant agreement, as he finds appropriate to carry out the purposes of the Act. Noncancellable obligations of the State agency properly incurred prior to the receipt of any notice of termination will be honored. The State agency shall be promptly notified of such termination in writing and given the reasons therefor.

(b) A notice of hearing under this section shall be published in the Federal Register and the period of time between such publication and the date fixed for the hearing shall be not less than 20 days. The nature of the hearing shall be dependent upon the issues involved. When "adjudicatory" facts are in issue, an evidentiary hearing shall be provided. The notice of hearing shall prescribe the rules of the proceeding.

1950.13—DELEGATION OF AUTHORITY

The Assistant Secretary is delegated the general authority of the Secretary under section 23 of the Act and is empowered to subdelegate that authority to such officers and employees as he deems appropriate. The delegation to the Assistant Secretary includes the power to issue, amend, and repeal rules under this part. The Commissioner of the Bureau of Labor Statistics is delegated (and is empowered to subdelegate) the authority to approve grants under section 23(a)(3)(A) of the Act for the development of plans to establish systems for the collection of information concerning the nature and frequency of occupational injuries and diseases and to approve grants for experimental and demonstration projects consistent with the objectives of the aforementioned section 23(a)(3)(A). The Commissioner shall from time to time consult with the Assistant Secretary concerning the performance of the duties delegated to him to assure uniform application of section 23 of the Act and the provisions of this part.

PART 1951

GRANTS FOR IMPLEMENTING APPROVED STATE PLANS

SUBPART A—APPLICABILITY AND DEFINITIONS

1951.1 Purpose and scope.
1951.2 Definitions.

SUBPART B—APPLICATIONS

1951.10 Eligibility.
1951.11 Manner of submitting application.
1951.12 Action upon application.

SUBPART C—AWARD AND TERMINATION

1951.20 Grant awards.
1951.21 Delegation of authority.
1951.22 Amount of award.
1951.23 Payments.
1951.24 Federal share; matching requirements.
1951.25 Termination.

SUBPART D—SPECIAL GRANT CONDITIONS

1951.30 Political activity.
1951.31 Nondiscrimination.
1951.32 Procurement standards.
1951.33 Travel.

SUBPART E—GRANTEE ACCOUNTABILITY

1951.40 Date of final accounting.
1951.41 Accounting for grant award payments.
1951.42 Accounting for equipment.
1951.43 Program income.
1951.44 Final settlement.
1951.45 Disputes.
1951.46 Copyrights and patents.
1951.47 Retention and custody of records.

AUTHORITY: The provisions of this Part 1951 issued under secs. 8(g), 23, 84 Stat. 1600, 1613.

SOURCE: The provisions of this Part 1951 appear at 37 F.R. 23263, Nov. 1, 1972, unless otherwise noted.

SUBPART A—APPLICABILITY AND DEFINITIONS

1951.1—PURPOSE AND SCOPE

(a) This part contains the procedures for making grants to the several States for the purposes listed in section 23(g) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590).

(b) Under section 23 (g) of the Act, the Assistant Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Assistant Secretary pursuant to section 18 of the Act and Parts 1902 and 1956 of this chapter.

[42 F.R. 12427, March 4, 1977.]

1951.2—DEFINITIONS

As used in this part and in grant instruments entered into pursuant to this part:

(a) The terms "State," "Assistant Secretary," and "Act" are defined as provided in paragraphs (a), (b), and (c) respectively, of § 1950.2 of this chapter.

(b) "State plan" means a plan submitted by a State to the Assistant Secretary for approval as set out in Parts 1902 and 1956 of this chapter.

[42 F.R. 12427, March 4, 1977.]

(c) "Approved State plan" means a State plan which the Assistant Secretary has approved.

SUBPART B—APPLICATIONS

1951.10—ELIGIBILITY

Grants under this part may be awarded only to a State agency, designated by the Governor of a State, which has had its State plan approved by the Assistant Secretary and which has submitted an application for a grant under this part. Such an application may be funded by a grant under this part for an amount not to exceed 50 per centum of the total cost to the State of implementing the State plan for the period covered by the grant application. The grant application must contain proposed costs which are allowable (i.e., directly allocable to implementing the approved plan, reasonable, and not otherwise barred by law, regulation, or policy). In addition, the State agency must be able to demonstrate that it can and will maintain such fiscal records and file with the Assistant Secretary such fiscal reports as are necessary to ensure the appropriate recordation of costs during the period of any grant awarded under this part.

1951.11–MANNER OF SUBMITTING APPLICATION

(a) An application for a grant under this part shall be submitted in such manner and at such time as the Assistant Secretary may prescribe.[1] The application shall contain a budget and sufficient cost detail with which to associate estimated cost elements with specific activities under the State plan, as more particularly described in the instructions for a grant application.[1]

(b) An application with two copies must be submitted by a State agency, designated by the Governor of a State, to the appropriate Regional Administrator of the Occupational Safety and Health Administration, U.S. Department of Labor.

(c) The application shall be executed by an individual authorized to act for the applicant State agency and to assume on behalf of the State agency those obligations imposed by the terms and conditions of any award, including the regulations of this part.

(d) The application must contain assurances satisfactory to the Assistant Secretary that the State agency has available to it sufficient funds and other resources with which it will match the Federal share of the cost of implementing the approved State plan.

(e) The application must bind the applicant to accept the grant conditions and other requirements of this part.

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[1] Instructions may be obtained from the Regional Administrators of the Occupational Safety and Health Administration.

1951.12—ACTION UPON APPLICATION

(a) The Assistant Secretary shall proceed to pass upon each application for a grant within a reasonable time following its receipt. In passing upon each application, the Assistant Secretary shall consult with a representative of the Secretary of Health, Education, and Welfare designated to establish liaison with the Assistant Secretary for the purpose of assisting the later's evaluation of grant applications. In so doing, he may act through such officers and employees and such experts or consultants engaged for this purpose as he determines are specially qualified to evaluate the particular grant application. Any recommendations of such representative as to approval or disapproval of an application shall be reduced to writing, and due regard shall be given to any such recommendations.

(b) The State agency shall be notified of action taken on its application. In the event of either a deferral (for further clarification, for final approval of the State plan, for lack of funds, or, otherwise, for further evaluation) or a disapproval, the notice shall be accompanied by a brief statement of the grounds for such deferral or disapproval, except where there is an affirmation of a previous disapproval. Any deferral or disapproval of an application shall not preclude its reconsideration or a reapplication within a reasonable time. Such request for reconsideration by or a reapplication to the Assistant Secretary shall be in writing. In his discretion, the Assistant Secretary may afford the applicant an opportunity for informal oral presentation concerning the request for reconsideration or reapplication.

(c) It is the policy of the Secretary of Labor to encourage the submission of applications for grants to fund approved State plans. To the extent practicable, the Assistant Secretary shall provide technical assistance to any State agency in the preparation of an application and in the correction of any defective application.

(d) If a grant is made, the initial award shall set forth the amount of funds granted and shall specify the period for which the grant is contemplated. The grant may provide that additional funds will be added at a later time, provided that grant performance is satisfactory and appropriations are avaliable. Grantees will be required to make separate application for continued support beyond the expiration of the period covered by any grant under this part.

SUBPART C—AWARD AND TERMINATION

1951.20—GRANT AWARDS

Within the limits of funds available for such purpose, the Assistant Secretary shall approve grant applications and make awards, in writing, for grants under this part, which grants shall specify the period covered by the award and the terms and conditions with which the grantee must comply in incurring costs in implementing the approved State plan, provided further, that the regulations in this part shall be incorporated by reference into and become a part of any grant awarded hereunder.

1951.21—DELEGATION OF AUTHORITY

The Assistant Secretary was delegated under Secretary of Labor Order 12–71, effective April 28, 1971 (36 F.R. 8754) and Secretary of Labor Order 19–71, effective June 18, 1971, the general authority of the Secretary to review applications for grants and make awards under section 23 of the Act and was empowered to subdelegate that authority to such officers and employees as he deems appropriate. The delegation to the Assistant Secretary, therefore, includes the power to issue, amend, and repeal rules under this part and to provide any policy, regulations, or guidelines by which this part is implemented. He may, with respect to any grant award, impose additional conditions prior to or at the time of any award when, in his judgment, such conditions are necessary to assure safe and healthful working conditions for working men and women, to assure or protect advancement of the approved State plan, or to promote the conservation of grant funds.

1951.22—AMOUNT OF AWARD

(a) The amount of any award shall be determined by the Assistant Secretary on the basis of his estimate of the sum necessary for all of the direct costs of implementing the approved State plan plus an additional amount for indirect costs, if any, which will be calculated by the Assistant Secretary either: On the basis of his estimate of the actual indirect costs reasonably related to the plan; or on the basis of a percentage of all of the estimated direct costs of the project when there are reasonable assurances that the use of such percentage will not exceed the approximate actual indirect costs. Such award may include an estimated provisional amount for indirect costs or for designated direct costs subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the amount properly expended by the grantee for provisional items has been determined by the Assistant Secretary: *Provided, however*, That no grant shall be made for an amount in excess of 50 percentum of the total cost as found necessary by the Assistant Secretary for the carrying out of the plan. In determining the grantee's share of the costs of implementing the approved State plan for the period to be covered by the grant, the grantee may not include (1) costs for which Federal grants from other sources have been or may be claimed or received, or (2) costs used to match other Federal grants, or (3) costs to be met from the Federal share of grant related income.

(b) All amounts awarded, whether provisional or otherwise, remain subject to accountability as provided under Subpart E of this part.

(c) To be an allowable cost under any grant awarded under this part, the cost that is paid or incurred by the grantee must be, in the opinion of the Assistant Secretary:

(1) Allocable. A cost must be necessary to implement the approved State plan and expended in accordance with this part and those conditions imposed in the grant instrument.

(2) Reasonable. A cost must be reasonable in amount.

(3) Timely. A cost must have been incurred after the effective date of the grant and prior to its expiration or termination.

(4) Documented. A cost must be supported by satisfactory evidence.

(d) Except as may otherwise be provided by this part, the identification of direct and indirect costs will be consistent with the generally accepted and established accounting practices that the grantee applies to its own activities provided it is in conformance with the applicable principles set forth in Chapter 29 and Subpart 1–15.7 of Chapter 1 of Title 41, Code of Federal Regulations.

(e) While §§ 1–15.712–2 and –3 provide respectively that expenditures which may increase the value of or useful life of facilities and capital assets shall be allowable only with the prior approval of the grantor agency, nevertheless, such costs will not be approved for grants awarded under this part unless the application clearly and convincingly establishes that the State agency cannot implement the approved State plan unless such expenditures are allowed.

(f) Any grant awarded under this part shall not commit or obligate the United States in any way to make any additional or supplemental or other award or continuation with respect to implementing that portion of the approved State plan covered by the proposed grant. However, the Assistant Secretary may, from time to time, within the period of time covered by the grant under this part, amend upward the initial grant award with respect to the implementation of an approved State plan, without any change in the plan or the period covered by the grant, where he finds, on the basis of such progress and accounting reports as he may require, that the amount of any prior award was less than the amount necessary to implement the approved State plan within the period covered by the grant and that the State will match such increase.

1951.23—PAYMENTS

The Assistant Secretary shall from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement for expenses to be incurred or incurred in the project period, to the extent he determines such payments necessary to promote prompt initiation and advancement of the implementation of that portion of the approved State plan covered by the period for which the grant is given. Payments will be made in a manner, monthly or otherwise, that will closely approximate the grantee's rate of expenditure, except that no partial Federal payment may be made in an amount that would bring the aggregate amount of all partial payments to an amount in excess of the total non-Federal or matching State share which the State has available at the time of such partial payment. All such payments shall be recorded by the grantee in accounting records which will disclose the financial results of a grant award, such as authorizations, program income, obligations, assets, liabilities, and disbursements, in terms of the Federal and State shares. Amounts paid shall be available for expenditure by the grantee in accordance with the regulations of this part throughout the grant period subject to such limitations as are contained in this part and in the grant instrument.

1951.24—FEDERAL SHARE: MATCHING REQUIREMENTS

(a) Federal funds will be granted on the basis of grant applications and may be used to meet not more than 50 percentum of the cost of implementing the approved State plan.

(b) The non-Federal or matching participation by the State may be derived from a variety of sources, including:

(1) Cash contributions. Cash contributions represent the grantee's cash outlay, including the outlay of money contributed to the grantee by other public (other-than-Federal) agencies and institutions and private organizations and individuals, except that funds originating from another Federal source other than General Revenue Sharing funds provided to the State under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512) as amended, or funds provided by a State as its matching share under another Federal grant, may not be counted as part of a State's matching share for grants awarded under this Part.

[42 F.R. 33731, July 1, 1977.]

(2) In-kind contributions. In-kind contributions represent the value of non-cash contributions provided from any of the sources in subparagraph (i) of this paragraph and are creditable as part of the State's matching share to the extent cash contributions from the same source would have been.

1951.25—TERMINATION

(a) Discontinuance by agreement.

Whenever, in the judgment of the Assistant Secretary and the designated State agency, the continuation of the performance of the grant by the grantee would produce results of no value in furthering the purposes of either the Act or the approved State plan, the parties shall enter into a written agreement terminating the grant.

(b) Termination by the Assistant Secretary for default.

Any grant awarded under this part may be revoked or terminated, in whole or in part, by the Assistant Secretary at any time within the period of the grant, whenever he finds that in his judgment the grantee has failed in a material respect to comply with the terms and conditions of the grant or the regulations of this part. The grantee shall be promptly notified of such finding in writing and given the reasons therefor, together with the effective date.

(c) Constructive termination by the Assistant Secretary.

If, under the procedures of section 18(f) of the Act, including notice and an opportunity for a hearing, the Assistant Secretary notifies the State agency of his withdrawal of approval of a previously approved State plan, such notice shall operate constructively as notice of termination of any grant awarded under this part.

(d) Termination by the grantee.

A grantee may at any time terminate or cancel its performance of an approved grant by notifying the Assistant Secretary in writing setting forth the reasons for such termination.

(e) Accounting.

Upon any termination, the grantee shall render an accounting pursuant to Subpart E of this part. Credit shall be allowed to the grantee as a cost under the grant of the amount required to settle, at minimum cost, any noncancelable obligations properly incurred by the grantee prior to receipt of notice of termination.

SUBPART D—SPECIAL GRANT CONDITIONS

1951.30—POLITICAL ACTIVITY

Under the provisions of the Federal Hatch Act (Political Activities Act of August 2, 1939, as amended; 5 U.S.C. 1501ff), all State or local agency officers and employees whose principal employment is in connection with activities financed by any grant under this part, irrespective of whether they are under the merit system, are prohibited, with certain exceptions, from:

(a) Using official authority or influence for the purpose of interfering with an election or a nomination for office, or affecting the result thereof.

(b) Directly or indirectly coercing, attempting to coerce, commanding, or advising any other State or local officer or employee to pay, lend, or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes.

(c) Actively participating in political management or in political campaigns.

1951.31—NONDISCRIMINATION

(a) The State shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) which provides that no person in the United States shall on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance and shall comply with the implementing rules issued by the Secretary of Labor with the approval of the President (29 CFR Part 31).

(b) The State shall comply with E.O. 11246 dated September 24, 1965, as amended, with regard to equal employment opportunities, and all rules, regulations, and procedures prescribed pursuant thereto.

1951.32—PROCUREMENT STANDARDS

Grantees, when procuring property and services, shall use their own procurement standards and procedures which are based upon their laws, rules, or regulations, which as a minimum shall provide that:

(a) All proposed procurement actions shall be reviewed selectively by grantee officials to avoid purchasing unnecessary or duplicative items. Where appropriate, lease versus purchase considerations shall be given and documented.

(b) All procurements, advertised or negotiated, shall be accomplished by obtaining adequate and effective competition to the maximum practicable extent, unless restricted by the nature and complexity of the material or services being procured. Where sealed bids are obtained by formal advertisement, the awards will be made to the lowest responsible bidder whose bid is responsive to the invitation for bids and is the most advantageous.

(c) Single source procurement and sole source procurements shall be adequately documented to support the selection of vendors and the prices accepted. Procurement by brand names shall be limited to sole source procurements.

(d) The type of contracts or purchase orders used (i.e., fixed price, cost reimbursable, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved. A "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(e) Solicitation for bids or quotations shall contain a clear and accurate description of the technical requirements for the material, product, or service to be procured and exclude any features which restrict competition.

(f) All procurements shall be conducted so as to avoid any possibility or appearance of collusion or conflict of interest.

(g) A system of contract administration shall be maintained to assure:

(1) Contractor conformance with the terms, conditions, and specifications of the contract or purchase order;

(2) Adequate expediting and timely followup of all purchases.

(h) All contracts awarded by grantees, exclusive of purchase orders, shall provide for unilateral termination by the grantee. In addition, such contracts shall provide for conditions of default and those situations where the contract cannot be completed through no fault of the contractor, i.e., termination for the convenience of the grantee.

1951.33—TRAVEL

To the extent the grantee has not established rules or policies which it uniformly applies regardless of source of funds in determining the amounts and types of reimbursable travel expenses, the Standardized Government Travel Regulations (OMB Circular No. A-7)[2] shall be applied in determining the amount of grant funds chargeable for travel expenses.

SUBPART E—GRANTEE ACCOUNTABILITY

1951.40—DATE OF FINAL ACCOUNTING

In addition to such other accounting as the Assistant Secretary may require, a grantee shall render, with respect to each grant, a full accounting as provided herein, as of a date which shall be either (a) the end of the period covered by the grant or as that date may have have been extended by mutual agreement or (b) the date of termination as provided in § 1951.25, whichever first occurs.

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[2] The Office of Management and Budget Circular No. A-7 Instructions the available for inspection at the Regional Administrative Office of the Assistant Secretary for Administration and Management, Department of Labor.

1951.41—ACCOUNTING FOR GRANT AWARD PAYMENTS

With respect to each approved grant, the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available vouchers or any other evidence satisfactory to the Assistant Secretary of expenditures for direct or indirect costs meeting the requirements of § 1951.22: *Provided, however*, That where the amount awarded for indirect cost was based on a predetermined fixed-percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

1951.42—ACCOUNTING FOR EQUIPMENT

(a) As used in this section the term "equipment" means an article of property procured or fabricated, in whole or in part with grant funds, which is complete in itself, is of a durable nature, and has an expected service life of more than 1 year. Equipment on hand as of the date established in § 1951.40 for which accounting is required in accordance with the procedures set forth in the "Occupational Safety and Health Administration Property Administration Guide"[3] shall be identified and reported by the grantee in accordance with such procedures, and, accounted for by one or a combination of the following methods, as determined by the Assistant Secretary:

(1) Retention of equipment for other occupational safety and health projects. Equipment may be used, without adjustment of accounts, on other grants within the scope of the Act or other activities, by the grantee, which the Assistant Secretary determines in writing, fall within the objectives of the Act, and no other accounting for such equipment shall be required: *Provided, however*, (i) That during such period of use no charge for depreciation, amortization, or for other use of the equipment shall be made against any existing or future Federal grant or contract, and (ii) if, within the period of its useful life, the equipment is transferred by sale or otherwise for use outside the scope of the Act, the Federal portion of the fair market value at the time of transfer shall be refunded to the Federal Government.

(2) Sale or other disposition of equipment, crediting of proceeds or value. The equipment may be sold by the grantee and the net proceeds of the sale credited to the grant account for project use, or they may be used or disposed of in any manner by the grantee by crediting to the grant account the Federal share of the fair market value on the termination date. To the extent equipment purchased from grant funds is used for credit or "trade-in" on the purchase of new equipment, the accounting obligation shall apply to the same extent to such new equipment.

(3) Return or transfer of equipment. The equipment may be returned to the Federal Government by the grantee or may be transferred to another grantee for the purpose of pursuing an objective within the scope of the Act.

(b) The grantee can be relieved of accountability for equipment by request, to the Assistant Secretary, in accordance with instructions in the "Occupational Safety and Health Administration Property Administration Guide" when the property is:

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[3] Information concerning the "Guide" may be obtained from the Regional Administrators of the Occupational Safety and Health Administration.

(1) Excess to the grantee's needs;

(2) Discovered to be missing from inventory or is destroyed or damaged;

(3) Desired by the grantee for cannibalization;

(4) Desired by the grantee for use in a "trade-in" transaction;

(5) Requested for return by the Department; and

(6) Disposed of as required in grant closeout procedures.

1951.43—PROGRAM INCOME

All program income (i.e., licenses, fees for inspection and otherwise, levies, royalties, etc.) except that income excluded below, earned during the grant period shall be retained by the grantee and, in acordance with the grant agreement, shall be deducted from the total project cost for the purpose of determining the net cost on which the Federal share will be based. The income in the two exceptions listed below may be retained by the State without credit to the cost of any grant awarded under this part. The two exceptions are:

(a) All interest income earned by a State government (including State agencies and instrumentalities) on deposits or investments of advance Federal payments of the Federal share of grants awarded under this part, except that interst or other income earned by a local unit of government (e.g., county, municipality, city, town, or school, or any agency or instrumentality of such local unit of government) shall be returned in its entirety to the Department for deposit in the U.S. Treasury.

(b) All revenue from fines and/or penalties.

1951.44—FINAL SETTLEMENT

There shall be payable to the Federal Government as final settlement, with respect to each approved grant, the total sum of:

(a) Any amount not accounted for pursuant to this subpart;

(b) Any credits for equipment as provided in § 1951.42;

(c) Any credits for residual material of a consummable nature, title to which has not been previously waived by the Assistant Secretary;

(d) Any credits for earned income as provided in § 1951.43 (a); and

(e) Any other settlements required pursuant to § 1951.43.

Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by set off or other action as provided by law.

1951.45—DISPUTES

Any disputes, concerning a question of fact arising as the result of the State agency's performance of any grant awarded under this part, shall be resolved by applying the disputes and appellate procedures and related clauses contained in §§ 1-1.318 and 1-7.101-12 of Chapter 1 and § 29-1.318 and Part 29-60 of Chapter 29 of Title 41, Code of Federal Regulations, except that:

(a) The word "contract" shall mean grant awarded under this part;

(b) The word "contractor" shall mean grantee;

(c) The term "contracting officer" shall mean the Assistant Secretary or his designee;

(d) The requirements in this section in no way alter, diminish, or in any way affect the responsibilities of the Assistant Secretary under section 18(f) of the Act with regard to a State's failure to comply substantially with any provision of the State plan or the State's remedies, as provided in section 18(g) of the Act, concerning a decision of the Assistant Secretary, under section 18(f), for which decision the State wishes to obtain judicial review.

1951.46—COPYRIGHTS AND PATENTS

(a) Any application for a grant award under this part shall constitute the consent of the grantee to give the Federal Government, its officers, agents, and employees, acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world to publish, translate, reproduce, deliver, perform, dispose of and sublicense such subject data or inventions, whether copyrighted or patented, any "subject data" (including writing, sound recordings, pictorial reproduction, drawings, or other graphical representatives and works of any similar nature) or invention, originated in or arising out of activities financed by this grant, whether or not within the scope of the approved State plan.

(b) Laboratory notes, related technical data and information pertaining to inventions or discoveries shall be maintained for such periods, and filed with or otherwise made available to the Assistant Secretary or those he may designate at such times and in such manner as he may determine necessary to carry out such Departmental regulations.

(c) Except as may otherwise be provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films, or similar materials developed or resulting from implementation of a State plan supported by a grant under this part, subject, however, to a royalty-free, nonexclusive license or right in the Federal Government to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

(d) Appropriate measures shall be taken by the grantee and by the Assistant Secretary to assure that no contracts, assignments, or other arrangements inconsistent with this grant obligation are continued or entered into and that all personnel involved in the supported activity are aware of and comply with such obligation.

1951.47—RETENTION AND CUSTODY OF RECORDS

(a) Record retention requirements, for the designated State agencies, established by the State governments receiving grants under this part are deemed adequate except that financial records, supporting documents, statistical records, and all other records pertinent to a grant program shall be retained for a period of 3 years, with the following qualifications:

(1) The records shall be retained beyond the 3-year period if audit findings have not been resolved.

(2) Records for nonexpendable property which was acquired with Federal grant funds shall be retained for 3 years after final disposition of the property.

(3) When grant records are transferred to or maintained by the Department, the 3-year retention requirement is not applicable to the grantee.

(b) The retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of the annual expenditure report.

(c) State agencies are authorized, if they so desire, to substitute microfilm copies in lieu of original records.

(d) The Assistant Secretary shall request transfer of certain records to his custody from State governments when he determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, he may make arangements with State governments concerning the retention of any records which are continuously needed for joint use.

(e) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State governments and their subgrantees or subcontractors which are pertinent to a specific grant program for the purpose of making audit, examination, evaluation, excerpts and transcripts. As used in this subsection, political subdivisions, e.g., counties, cities, towns, etc., are, to the extent their relationship to the designated State agency is applicable, considered to be subgrantees or subcontractors. The substance of this subsection shall be inserted in any subgrant or subcontract entered into by the designated State agency under any grant awarded under this part.

(f) No restriction is placed on State agencies which limits public access to the State governments' records except when records must remain confidential for the following reasons:

(1) To prevent a clearly unwarranted invasion of personal privacy.

(2) To specifically comply with a Federal Executive order or statute requiring the record to be kept secret.

(3) To protect commercial or financial information obtained from a person or firm on a privileged or confidential basis.

(4) To avoid the disclosure of any other information which can be exploited for the purpose of personal gains.

PART 1952

APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

SUBPART A—GENERAL PROVISIONS AND CONDITIONS

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SUBPART B—MONTANA [REVOKED.]

SUBPART C—SOUTH CAROLINA

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1952.102 Level of Federal enforcement.
1952.103 Developmental schedule.
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1952.106 Where the plan may be inspected.
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1952.109 Completed developmental steps.

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1952.110 Description of the plan.
1952.111 Where the plan may be inspected.
1952.112 Level of Federal enforcement.
1952.113 Developmental schedule.
1952.114 Completed developmental steps.

SUBPART F—WASHINGTON

1952.120 Description of the plan.
1952.121 Where the plan may be inspected.
1952.122 Level of Federal enforcement.
1952.123 Developmental schedule.
1952.124 Completed developmental steps.

SUBPART G—NORTH DAKOTA [REVOKED.]

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1952.150 Description of the plan.
1952.151 Where the plan may be inspected.
1952.152 Level of Federal enforcement.
1952.153 Developmental schedule.
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SUBPART J—IOWA

1952.160 Description of plan.
1952.161 Where the plan may be inspected.
1952.162 Level of Federal enforcement.
1952.163 Developmental schedule.
1952.164 Completed developmental steps.

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1952.170 Description of the plan.
1952.171 Where the plan may be inspected.
1952.172 Level of Federal enforcement.
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SUBPART L—NEW YORK [REVOKED.]

SUBPART M—COLORADO

1952.190 Description of the plan.
1952.191 Where the plan may be inspected.
1952.192 Level of Federal enforcement.
1952.193 Developmental schedule.
1952.194 Completed developmental steps.

SUBPART N—MINNESOTA

1952.200 Description of the plan.
1952.201 Where the plan may be inspected.
1952.202 Level of Federal enforcement.
1952.203 Developmental schedule.
1952.204 Completed developmental steps.

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1952.210 Description of the plan.
1952.211 Where the plan may be inspected.
1952.212 Level of Federal enforcement.
1952.213 Developmental schedule.
1952.214 Completed developmental steps.

SUBPART P—TENNESSEE

1952.220 Description of the plan.
1952.221 Where the plan may be inspected.
1952.222 Level of Federal enforcement.
1952.223 Developmental schedule.
1952.224 Completion of developmental steps and certification.

SUBPART Q—KENTUCKY

1952.230 Description of the plan.
1952.231 Where the plan may be inspected.
1952.232 Level of Federal enforcement.
1952.233 Developmental schedule.
1952.234 Completed developmental steps.

SUBPART R—ALASKA

1952.240 Description of the plan.
1952.241 Where the plan may be inspected.
1952.242 Level of Federal enforcement.
1952.243 Developmental schedule.
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SUBPART S—THE VIRGIN ISLANDS

1952.250 Description of the plan.
1952.251 Where the plan may be inspected.
1952.252 Level of Federal enforcement.
1952.253 Developmental schedule.
1952.254 Completed developmental steps.

SUBPART T—MICHIGAN

1952.260 Description of the plan.
1952.261 Where the plan may be inspected.
1952.262 Level of Federal enforcement.
1952.263 Developmental schedule.
1952.264 Completed developmental steps.

SUBPART U—VERMONT

1952.270 Description of the plan.
1952.271 Where the plan may be inspected.
1952.272 Level of Federal enforcement.
1952.273 Developmental schedule.
1952.274 Completion of developmental steps and certification.

SUBPART V—ILLINOIS [REVOKED]

SUBPART W—NEVADA

1952.290 Description of the plan.
1952.291 Where the plan may be inspected.
1952.292 Level of Federal enforcement.
1952.293 Developmental schedule.
1952.294 Completed developmental steps.

SUBPART X [RESERVED]

SUBPART Y—HAWAII

1952.310 Description of the plan.
1952.311 Where the plan may be inspected.
1952.312 Level of Federal enforcement.
1952.313 Developmental schedule.
1952.314 Completion of developmental steps and certification.

SUBPART Z—INDIANA

1952.320 Description of the plan.
1952.321 Where the plan may be inspected.
1952.322 Level of Federal enforcement.
1952.323 Developmental schedule.
1952.324 Completed developmental steps.

SUBPART AA—WISCONSIN [REVOKED.]

SUBPART BB—WYOMING

1952.340 Description of the plan.
1952.341 Where the plan may be inspected.
1952.342 Level of Federal enforcement.
1952.343 Developmental schedule.
1952.344 Completed developmental steps.

SUBPART CC—ARIZONA

1952.350 Description of the plan.
1952.351 Where the plan may be inspected.
1952.352 Level of Federal enforcement.
1952.353 Developmental schedule.
1952.354 Completed developmental steps.

SUBPART DD—NEW MEXICO

1952.360 Description of the plan.
1952.361 Where the plan may be inspected.
1952.362 Level of Federal enforcement.
1952.363 Developmental schedule.
1952.364 Completed developmental steps.

SUBART EE—VIRGINA

1952.370 Description of the plan.
1952.371 Where the plan may be inspected.
1952.372 Level of Federal enforcement.
1952.373 Developmental schedule.

[41 F.R. 39027, September 14, 1976.]

SUBPART FF—PUERTO RICO

1952.380 Description of the plan.
1952.381 Where the plan may be inspected.
1952.382 Level of Federal enforcement.
1952.383 Developmental schedule.
1952.384 Completed developmental steps.

SOURCE: The provisions of this Part 1952 appear at 37 F.R. 25929, Dec. 6, 1972 unless otherwise noted. AUTHORITY: Sec. 18, Public Law 91-596, 84 Stat. 1608 (29 U.S.C. 667).

SUBPART A—GENERAL PROVISIONS AND CONDITIONS

1952.1—PURPOSE AND SCOPE

(a) This part sets forth the Assistant Secretary's approval of State plans submitted under section 18 of the Act and Part 1902 of this chapter. Each approval of a State plan is based on a determination by the Assistant Secretary that the plan meets the requirements of section 18(c) of the Act and the criteria and indices of effectiveness specified in Part 1902.

(b) This subpart contains general provisions and conditions which are applicable to all State plans, regardless of the time of their approval. Separate subparts are used for the identification of specific State plans, indication of locations where the full plan may be inspected and copied, and setting forth any special conditions and special policies which may be applicable to a particular plan.

1952.2—DEFINITIONS

(a) "Act" means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(b) "Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

1952.3—DEVELOPMENTAL PLANS

Any developmental plan; that is, a plan not fully meeting the criteria set forth in § 1902.3 of this chapter at the time of approval, must meet the requirements of § 1902.2(b) of this chapter.

1952.4 RECORDKEEPING AND REPORTING REQUIREMENTS.

(a) States must adopt recordkeeping and reporting regulations which are substantially identical to 29 CFR Part 1904 "Recording and Reporting Occupational Injuries and Illnesses" except for § 1904.13 of this chapter, which provides for variances. However, a State is not precluded from imposing stricter recordkeeping requirements; that is, requiring records from employers of any number of employees.

[42 F.R. 38568, July 29, 1977.]

(b) Employer petitions for variances or exceptions to State recordkeeping and reporting requirements under an approved plan must be obtained from the Bureau of Labor Statistics of the U.S. Department of Labor. Therefore, a State may not grant a variance to recordkeeping and reporting requirements under their own procedures.

(c) In order to preserve the uniformity of statistics, a State must recognize all variances granted by the Bureau of Labor Statistics.

(d) A State is not prohibited from requiring supplementary reporting or recordkeeping data, but such additional data must be approved by the Bureau of Labor Statistics to insure that there will be no interference with the primary uniform reporting objectives.

(e) Data obtained from employers in the periodic survey conducted pursuant to 29 CFR 1904.21 (OSHA Form 103 and corresponding State forms) shall not be used to identify specific employers for enforcement purposes.

[39 F.R. 29181, August 14, 1974.]

1952.5—AVAILABILITY OF THE PLANS

(a) A complete copy of each State plan including any supplements thereto, shall be kept at (1) Office of Federal and State Operations, OSHA, Room 305, Railway Labor Building, 400 First Street, NW., U.S. Department of Labor, Washington, DC 20210; and (2) the office of the nearest Regional Administrator, Occupational Safety and Health Administration. The addresses of the Regional Administrators are listed in the "United States Government Organization Manual," 1972/73, p. 310. The copy shall be available for public inspection and copying.

(b) A complete copy of the State plan of a particular State, including any supplements thereto, shall be kept at the office of the State office listed in the appropriate subpart of this Part 1952.

1952.6—PARTIAL APPROVAL OF STATE PLANS

(a) The Assistant Secretary may partially approve a plan under Part 1902 of this chapter whenever:

(1) The portion to be approved meets the requirements of Part 1902;

(2) The plan covers more than one occupational safety and health issue; and

(3) Portions of the plan to be approved are reasonably separable from the remainder of the plan.

(b) Whenever the Assistant Secretary approves only a portion of a State plan, he may give notice to the State of an opportunity to show cause why a proceeding should not be commenced for disapproval of the remainder of the plan under Subpart C of Part 1902 before commencing such a proceeding.

1952.7—PRODUCT STANDARDS

(a) Under section 18(c)(2) of the Act, a State plan must not include standards for products which are distributed or used in interstate commerce which are different from Federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. In § 1902.3(c)(2) of this chapter this is interpreted as not being applicable to customized products, or parts not normally available on the open market, or to the optional parts, or additions to products which are ordinarily available with such optional parts, or additions.

(b) In situations where section 18(c)(2) is considered applicable, and provision is made for the adoption of product standards, the requirements of section 18(c)(2), as they relate to undue burden on interstate commerce, shall be treated as a condition subsequent in light of the facts and circumstances which may be involved.

1952.8—VARIATIONS, TOLERANCES, AND EXEMPTIONS AFFECTING THE NATIONAL DEFENSE

(a) The power of the Secretary of Labor under section 16 of the Act to provide reasonable limitations and variations, tolerances, and exemptions to and from any or all provisions of the Act as he may find necessary and proper to avoid serious impairment of the national defense is reserved.

(b) No action by a State under a plan shall be inconsistent with action by the Secretary under this section of the Act.

1952.9—VARIANCES AFFECTING MULTI-STATE EMPLOYERS

(a) Where a State standard is identical to a Federal standard addressed to the same hazard, an employer or group of employers seeking a temporary or permanent variance from such standard, or portion thereof, to be applicable to employment or places of employment in more than one State, including at least one State with an approved plan, may elect to apply to the Assistant Secretary for such variance under the provisions of 29 CFR Part 1905, as amended.

(b) Actions taken by the Assistant Secretary with respect to such application for a variance, such as interim orders, with respect thereto, the granting, denying, or issuing any modification or extension thereof, will be deemed prospectively an authoritative interpretation of the employer or employers' compliance obligations with regard to the State standard, or portion thereof, identical to the Federal standard, or portion thereof, affected by the action in the employment or places of employment covered by the application.

(c) Nothing herein shall affect the option of an employer or employers seeking a temporary or permanent variance with applicability to employment or places of employment in more than one State to apply for such variance either to the Assistant Secretary or the individual State agencies involved. However, the filing with, as well as granting, denial, modification, or revocation of a variance request or interim order by, either authority (Federal or State) shall preclude any further substantive consideration of such application on the same material facts for the same employment or place of employment by the other authority.

(d) Nothing herein shall affect either Federal or State authority and obligations to cite for noncompliance with standards in employment or places of employment where no interim order, variance, or modification on extension thereof, granted under State or Federal laws applies, or to cite for noncompliance with such Federal or State variance action.

[40 F.R. 25450, June 16, 1975.]

1952.10—REQUIREMENTS FOR APPROVAL OF STATE POSTERS

(a)

(1) In order to inform employees of their protections and obligations under applicable State law, of the issues not covered by State law, and of the continuing availability of Federal monitoring under section 18*(f)* of the Act, States with approved plans shall develop and require employers to post a State poster meeting the requirements set out in paragraph (a) (5) of this section.

(2) Such poster shall be substituted for the Federal poster under section 8(c) (1) of the Act and §1903.2 of this chapter where the State attains operational status for the enforcement of State standards as defined in §1954.3(b) of this chapter.

(3) Where a State has distributed its poster and has enabling legislation as defined in §1954.3(b)(1) of this chapter but becomes nonoperational under the provisions of §1954.3(f)(1) of this chapter because of failure to be at least as effective as the Federal program, the approved State poster may, at the discretion of the Assistant Secretary, continue to be substituted for the Federal poster in accordance with paragraph (a) (2) of this section.

(4) A State may, for good cause shown, request, under 29 CFR Part 1953, approval of an alternative to a State poster for informing employees of their protections and obligations under the State plans, provided such alternative is consistent with the Act, 29 CFR 1902.4(c) (2) (iv) and applicable State law. In order to qualify as a substitute for the Federal poster under this paragraph, such alternative must be shown to be at least as effective as the Federal poster requirements in informing employees of their protections and obligations and address the items listed in paragraph (a) (5) of this section.

(5) In developing the poster, the State shall address but not be limited to the following items:

(i) Responsibilities of the State employers and employees;

(ii) The right of employees or their representatives to request workplace inspections;

(iii) The right of employees making such requests to remain anonymous;

(iv) The right of employees to participate in inspections;

(v) Provisions for prompt notice to employers and employees when alleged violations occur;

(vi) Protection for employees against discharge or discrimination for the exercise of their rights under Federal and State law;

(vii) Sanctions;

(viii) A means of obtaining further information on State law and standards and the address of the State agency;

(iv) The right to file complaints with the Occupational Safety and Health Administration about State program administration;

(x) A list of the issues as defined in §1902.2(c) of this chapter which will not be covered by State plan;

(xi) The address of the Regional Office of the Occupational Safety and Health Administration; and

(xii) Such additional employee protection provisions and obligations under State law as may have been included in the approved State plan.

(b) Posting of the State poster shall be recognized as compliance with the posting requirements in section 8(c) (1) of the Act and §1903.2 of this chapter, provided that the poster has been approved in accordance with Subpart B of Part 1953. Continued Federal recognition of the State poster is also subject to pertinent findings of effectiveness with regard to the State program under 29 CFR Part 1954.

[39 F.R. 39035, November 5, 1974].

1952.11—STATE AND LOCAL GOVERNMENT EMPLOYEE PROGRAMS

(a) Each approved State plan must contain satisfactory assurances that the State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions which program is as effective as the standards contained in an approved plan.

(b) This criteria for approved State plans is interpreted to require the following elements with regard to coverage, standards, and enforcement:

(1) **Coverage**. The program must cover all public employees over which the State has legislative authority under its constitution. "To the extent permitted by its law," specifically recognizes the situation where local governments exclusively control their own employees, such as under certain "home rule" charters.

(2) **Standards**. The program must be as effective as the standards contained in the approved plan applicable to private employers. Thus, the same criteria and indices of standards effectiveness contained in §§ 1902.3(c) and 1902.4(a) and (b) of this chapter would apply to the public employee program. Where hazards are unique to public employment, all appropriate indices of effectiveness, such as those dealing with temporary emergency standards, development of standards, employee information, variances, and protective equipment, would be applicable to standards for such hazards.

(3) **Enforcement**. Although section 18(c)(6) of the Act requires State public employee programs to be "as effective as standards" contained in the State plan, minimum enforcement elements are required to ensure an "effective and comprehensive" public employee program as follows (See notice of approval of the North Carolina Plan (38 FR 3041):

(i) Regular inspections of workplaces, including inspections in response to valid employee complaints;

(ii) A means for employees to bring possible violations to the attention of inspectors;

(iii) Notification to employees, or their representatives, of decisions that no violations are found as a result of complaints by such employees or their representatives, and informal review of such decisions;

(iv) A means of informing employees of their protections and obligations under the Act;

(v) Protection for employees against discharge of discrimination because of the exercise of rights under the Act:

(vi) Employee access to information on their exposure to toxic materials or harmful physical agents and prompt notification to employees when they have been or are being exposed to such materials or agents at concentrations or levels above those specified by the applicable standards;

(vii) Procedures for the prompt restraint or elimination of imminent danger situations;

(viii) A means of promptly notifying employers and employees when an alleged violation has occurred, including the proposed abatement requirements;

(ix) A means of establishing time-tables for the correction of violations;

(x) A program for encouraging voluntary compliance; and;

(xi) Such other additional enforcement provisions under State law as may have been included in the State plan.

(c) In accordance with § 1902.3(b)(3), the State agency or agencies designated to administer the plan throughout the State must retain overall responsibility for the entire plan. Political subdivisions may have the responsibility and authority for the development and enforcement of standards: *Provided*, That the designated State agency or agencies have adequate authority by statute, regulation, or agreement to insure that the commitments of the State under the plan will be fulfilled.

These commitments supersede and control any delegation of authority to State or local agencies. (See Notice of Approval of Colorado Plan, 38 FR 25172.)

[40 F.R. 58450, December 17, 1975]

SUBPART B—MONTANA

1952.50—DESCRIPTION OF THE PLAN

Subpart B—Revoked.

[39 F.R. 23261, June 27, 1974.]

SUBPART C—SOUTH CAROLINA

1952.100—DESCRIPTION OF THE PLAN

(a) The plan identifies the South Carolina Department of Labor as the State agency designated to administer the plan. It adopts the definition of occupational safety and health issues expressed in § 1902.2(c)(1) of this chapter. The plan states that the Department of Labor has been promulgating safety and health standards. The South Carolina Commissioner of Labor is promulgating all standards and amendments thereto which have been promulgated by the Secretary of Labor, except those found in §§ 1910.13; 1910.14; 1910.15; and 1910.16 of this chapter (ship repairing, shipbuilding, shipbreaking, and longshoring). The plan describes procedures for the development and promulgation of additional standards, enforcement of such standards, and the prompt restraint or elimination of imminent danger situations. The South Carolina Legislature passed enabling legislation in 1971, a copy of which was submitted with the original plan. Section 40-261 through 40-274 South Carolina Code of Laws, 1962. The amendments to the plan include proposed amendments to this legislation to more fully bring the plan into conformity with the requirements of Part 1902. Under the amended legislation, the South Carolina Department of Labor will have full authority to administer and enforce all laws, rules, and orders protecting employee safety and health in all places of employment in the State.

(b) The plan includes a statement of the Governor's support for the legislative amendments and a legal opinion that the amended act will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the constitution and laws of South Carolina. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 upon enactment of the proposed legislative amendments.

1952.101—WHERE THE PLAN MAY BE INSPECTED

A copy of the complete plan may be inspected and copied during normal business hours at the following locations: United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210; Assistant Regional Director, Occupational Safety and Health Administration, Suite 587, 1375 Peachtree Street NE, Atlanta, GA 30309; Commissioner of Labor 1710 Gervais Street, Columbia, SC.

[39 F.R. 4661, February 6, 1974.]

1952.102—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § § 1902.20 (b) (1) (iii) and 1954.3 of this chapter under which an agreement has been Carolina is operational in issues covered by the South Carolina occupational safety and health plan, discretionary Federal enforcement authority under section 18 (c) of the act (29 U.S.C. 667 (c)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910 and 29 CFR Part 1926. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: Complaints filed with the U.S. Department of Labor about violations of the discrimination provisions of section 11 (c) of the Act (29 U.S.C. 660 (c)); Federal standards promulgated subsequent to the agreement where necessary to protect employees, as in the case of temporary emergency standards promulgated under section 6 (c) of the Act (29 U.S.C. 655 (c)), in the issues covered under the plan and the entered into with South Carolina, effective May 9, 1975, and based on a determination that So [illegible] agreement until such time as South Carolina shall have adopted equivalent standards in accordance with Subpart C of 29 CFR Part 1953; Standards in 29 CFR 1910.13 through 1910.16, which issues have been specifically excluded from coverage under South Carolina plan; and investigations and inspections for the purpose of the evaluation of the South Carolina plan under section 18 (e) and (f) of the Act (29 U.S.C. 667 (e) and (f)). The Assistant Regional Director for Occupational Safety and Health will make a prompt recommendation for resumption of exercise of Federal enforcement authority under section 18 (e) of the Act (29 U.S.C. 667 (e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in South Carolina.

[40 F.R. 27024, June 26, 1975.]

1952.103—DEVELOPMENTAL SCHEDULE

The South Carolina plan is developmental. The following is the schedule of the developmental steps provided by the plan:

(a) Introduction of the above-mentioned legislative amendments in the legislative session following approval of the plan.

(b) Public hearings and adoption of Federal standards to be completed by December 1972.

(c) A management information system to be completed by no later than June 30, 1974.

(d) A voluntary compliance program to be completed by no later than June 30, 1974.

(e) An occupational safety and health program for public employees to be completed by no later than June 30, 1974.

(f) A program for the coverage of agriculture workers to be completed no later than June 30, 1973.

(g) An approved merit system covering employees implementing the plan to be effective 90 days following approval of the plan.

(h) A revised compliance manual to be completed within 6 months following approval of the plan.

1952.104—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with § 1952.103(a) legislative amendments were introduced into the 1973 South Carolina General Assembly and were enacted effective June 12, 1973. The amendments have been supplemented by State commitments to (1) take action on all employee discrimination complaints within 90 days, and (2) limit the duration of temporary variances to a maximum of two years, inclusive of any renewals.

(b) In accordance with § 1952.103(b) the South Carolina occupational safety and health standards, identical to Federal standards (through December 3, 1974), have been promulgated and were approved by the Assistant Regional Director for Occupational Safety and Health effective April 10, 1975 (40 FR 16257).

(c) In accordance with § 1952.103(d) a voluntary compliance program, to be known as the Taxpayers' Assistance Program has been developed.

(d) In accordance with § 1952.103(f) coverage of agricultural workers began on July 1, 1973, and was initiated directly by the South Carolina Department of Labor. (The State plan has been amended to delete the proposal to delegate such responsibility to the State Department of Agriculture.)

(e) In accordance with § 1952.103(g) the State plan has been amended to show extensions of merit system coverage to the South Carolina Department of Labor, Division of Occupational Safety and Health. Agreement with the Department of Health and Environmental Control requires that all health personnel cooperating in the State occupational safety and health program be likewise covered by the State merit system.

[40 F.R. 44132, September 25, 1975.]

(f) In accordance with the requirements of § 1952.10 the South Carolina Safety and Health Poster for private and public employees was approved by the Assistant Secretary on February 19, 1976.

[41 F.R. 9547, March 5, 1976.]

(g) In accordance with § 1952.103(c) development of a management information system designed to provide the data required by the Assistant Secretary and information necessary for internal management of resources and evaluation of State program performance has been completed.

(h) The State plan has been amended to include the details of a public employee program. State and local government employees will be afforded protection identical to that of employees in the private sector.

(i) The South Carolina plan has been amended to include an expanded radiation health effort. The Division of Radiological Health, South Carolina Department of Health and Environmental Control, under contract to the South Carolina Department of Labor will make inspections to provide coverage of radiation hazards not subject to regulation under the Atomic Energy Act of 1954.

(j) In accordance with plan commitments, South Carolina regulations for enforcement of standards and review of contested cases, Article IV, were revised and repromulgated on June 5, 1975. Further amendment to Section 4.00K (September 26, 1975) and a January 15, 1976, letter of supplemental assurances from Commissioner Edgar L. McGowan are considered integral parts of the approved South Carolina review procedures. On March 11, 1976, the State of South

Carolina promulgated the necessary changes to Article IV to fulfill the commitments contained in their January 15, 1976, letter of supplemental assurances.

[42 F.R. 5972, February 1, 1977.]

(k) The State plan has been amended to include an Affirmative Action Plan in which the State outlines its policy of equal employment opportunity.

[41 F.R. 21774, May 28, 1976.]

(l) In accordance with § 1952.103(h) the State has developed and amended a Compliance Manual which defines the procedures and guidelines to be used by the South Carolina compliance and consultation staff in carrying out the goals of the program.

[41 F.R. 31204, July 27, 1976.]

(m) In accordance with § 1902.34 of this chapter, the South Carolina occupational safety and health plan was certified, effective August 3, 1976, as having completed all developmental steps specified in the plan as approved on November 30, 1972, on or before December 31, 1975.

[41 F.R. 32424, August 3, 1976.]

SUBPART D—OREGON

1952.105—DESCRIPTION OF THE PLAN

(a)

(1) The plan identifies the Oregon Workmen's Compensation Board as the State agency designated to administer the plan. It adopts the definition of occupational safety and health issues expressed in § 1902.2(c)(1) of this chapter. The plan contains a standards comparison of existing and proposed State standards with Federal standards. All proposed standards except those found in §§ 1910.13, 1910.14, 1910.15, and 1910.16 (ship repairing, shipbuilding, shipbreaking and longshoring) will be adopted and enforced after public hearings within 1 year following approval of the plan.

(2) The plan provides a description of personnel employed under a merit system; the coverage of employees of political subdivisions; procedures for the development and promulgation of standards; procedures for prompt and effective standards setting action for the protection of employees against new and unforeseen hazards; and procedures for the prompt restraint of imminent danger situations.

(b)

(1) The plan includes proposed draft legislation to be considered by the Oregon Legislature during its 1973 session amending chapter 654 of Oregon Revised Statutes to bring it into conformity with the requirements of Part 1902 of this chapter. Under the proposed legislation, the workmen's compensation board will have full authority to enforce and administer all laws and rules protecting employee health and safety in all places of employment in the State. The legislation further proposes to bring the State into conformity in areas such as variances and protection of employees from hazards.

(2) The legislation is also intended to insure inspections in response to complaints; employer and employee representatives' opportunity to accompany inspectors and to call attention to possible violations before, during and after inspections; notification of employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protections; protection of employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets; provision for prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers for violations of standards and orders; employer right of review of alleged violations, abatement periods and proposed penalties to the workmen's compensation board and employee participation in review proceedings. The plan also proposes to develop a program to encourage voluntary compliance by employers and employees.

(c) The plan includes a statement of the Governor's support for the legislative amendments and legal opinion that the draft legislation will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the constitution and laws of Orgon. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 upon enactment of the proposed legislation.

(d) The Orgon plan includes the following documents as the date of approval:

(1) The plan description document with appendices.

(2) Appendix G, the standards comparison.

(3) Letter from M. Keith Wilson, chairman workmen's compensation board to the Assistant Secretary, June 30, 1972, on product standards.

(4) Letter from M. Keith Wilson to James Lake, regional administrator, June 30, 1972, clarifying employee sanction provisions.

(5) Letter with attachments from M. Keith Wilson to the Assistant Secretary, September 5, 1972, clarifying several issues raised during the review process.

(6) Letter from the commissioners from the workmen's compensation board to the Assistant Secretary, December 4, 1972, clarifying the remaining issues raised during the review process.

(e) Also available for inspection and copying with the plan documents will be the public comments received and a transcript of the public hearing held September 27, 1972.

1952.106—WHERE THE PLAN MAY BE INSPECTED

A copy of the complete plan may be inspected and copied during mormal business hours at the following locations: United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, N.W., Washington, D.C. 20210; Assistant Regional Director, Occupational Safety and Health Administration, Room 1813, Smith Tower Building, 506 Second Avenue, Seattle, WA 98104; Workmen's Compensation Board, Labor and Industries Building, Room 204, Salem, Oreg. 97310; and the Office of the Occupational Health Section, State Health Division, Room 840, State Office Building, 1400 Southwest Fifth Avenue, Portland, OR.

[39 F.R. 4661, February 6, 1974.]

1952.107—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to §§ 1902.20(b) (1) (iii) and 1954.3 of this chapter under which an agreement has been entered into with Oregon effective January 23, 1975, and based on a determination that Oregon is operational in the issues covered by the Oregon occupational safety and health plan, the U.S. Department of Labor will continue to exercise authority, among other things, with regard to: Federal standards promulgated subsequent to the agreement where necessary to protect employees as in the case of standards promulgated under section 6(c) of the Act (29 U.S.C. 655(c)), in issues covered under 29 CFR Part 1910 and 29 CFR Part 1926, until such time as Oregon shall have adopted equivalent standards in accordance with 29 CFR Part 1953, Subpart C; Federal standards contained in the issues covered by Subpart B, Ship repairing, Shipbuilding, Shipbreaking, and Longshoring, 29 CFR 1910.13 through 1910.16, as they relate to employment under the exclusive jurisdiction of the Federal government on the navigable waters of the United States, including dry docks and marine railways; complaints about violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660 (c)); and investigation and inspection for the purpose of evaluation of the Oregon plan under sections 18 (e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The U.S. Department of Labor authority will also continue to be exercised with regard to employments and places of employment on the Warm Springs Indian Reservation. The Assistant Regional Director for Occupational Safety and Health will make prompt recommendation for resumption of the appropriate level of exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in the State of Oregon.

[43 F.R. 36624, August 18, 1978.]

1952.108—DEVELOPMENTAL SCHEDULE

The Oregon plan is developmental. The schedule of developmental steps as described in the plan is revised in a letter dated November 27, 1973, from M. Keith Wilson, Chairman, Workman's Compensation Board to James Lake, Assistant Regional Director for OSHA and includes:

(a) Introduction of the legislative amendments in the legislative session following approval of the plan. The legislation was passed and became effective July 1, 1973.

(b) Complete revision of all occupational safety and health codes as proposed within one year after the proposed standards are found to be at least as effective by the Secretary of Labor.

(c) Development of administrative rules and procedures, including rights and responsibilities of employers, employees and the Workmen's Compensation Board including regulations on variances, exposure to hazards and access to information on exposure to hazards by July 1, 1974.

(d) Training of present inspection personnel of the accident prevention division and the occupational health section by July 1, 1973. Selection and training of additional inspectors within one year of the effective date of the 1973-1975 budget.

(e) Establishment of specific occupational safety and health goals by July 1, 1974. These goals will be reviewed and revised biannually.

(f) Development and implementation of an affirmative action program by July 1, 1973.

(g) Development and implementation of administrative rules relative to an on-site voluntary compliance consultation program by July 1, 1974

[39 F.R. 11861, April 1, 1974.]

1952.109—COMPLETED DEVELOPMENTAL STEP

(a)

(1) In accordance with § 1952.108 (a), the Oregon Safe Employment Act, Senate Bill 44, amending Oregon Revised Statutes 654 and 446 and other miscellaneous provisions, was signed by the Governor on July 22, 1973, and carried an effective date of July 1, 1973.

(2) The following differences between the program described in § 1952.105 (b) (1) and the program authorized by the State law are approved:

(i) By promulgation of the appropriate regulatory provision, Rule 46 331, and by including a mandatory consultation requirement in its Field Compliance Manual, Oregon provides for employee participation, when there is no employee representative, by requiring the inspector to consult with employees.

(ii) In accordance with ORS. 645.062 (3), an additional written request from an employee is required in order to obtain a statement of the reasons why no citation was issued as a result of an employee complaint of unsafe work conditions, which will be subject to evaluation in its administration.

(iii) Section 18 of Oregon's legislation authorizes a stay of the abatement date by operation of law pending a final order of the Board for nonserious violations and for serious violations when the abatement date of the serious violation is specifically contested. An expedited hearing will be requested for serious violations when the abatement date is contested.

[40 F.R. 24522, June 9, 1975.]

(b) In accordance with the requirements of § 1952.10 the Oregon State Poster with assurances submitted on September 2, 1975, was approved by the Assistant Secretary on November 5, 1975.

(c) In accordance with § 1952.108(d) Oregon has completed the training as described.

(d) Oregon has developed and implemented a computerized Management Information System.

[41 F.R. 8955, March 2, 1976.]

(e) In accordance with § 1952.108(f) Oregon has developed and implemented an Affirmative Action Plan.

[41 F.R. 23671, June 11, 1976.]

(f) In accordance with § 1952.108(e) a Statement of Goals and Objectives has been developed by the State and was approved by the Assistant Secretary on June 24, 1977.

(g) The Oregon State Compliance Manual which is modeled after the Federal Field Operations Manual has been developed by the State, and was approved by the Assistant Secretary on June 24, 1977.

[42 F.R. 34281, July 5, 1977.]

(h) In accordance with the requirements of § 1952.4, Oregon State recordkeeping and reporting regulations adopted on June 4, 1974, and subsequently revised, were approved by the Assistant Secretary on August 28, 1980.

[45 F.R. 60429, Sept. 12, 1980.]

SUBPART E—UTAH

1952.110—DESCRIPTION OF THE PLAN

(a) The plan identifies the Utah State Industrial Commission as the State agency designated to administer the plan throughout the State. It defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). The plan states that the Utah Industrial Commission currently is exercising statewide inspection authority to enforce many State standards. It describes procedures for the development and promulgation of additional safety standards, rule making power for enforcement of standards, laws, and orders in all places of employment in the State; the procedures for prompt restraint or elimination of imminent danger conditions; and procedures for inspection in response to complaints. The plan includes proposed draft legislation to be considered by the Utah Legislature during its 1973 session amending title 35, chapter 1 of the Utah State Code and related provisions, to bring them into conformity with the requirements of Part 1902. Under this legislation all occupational safety and health standards and amendments thereto which have been promulgated by the Secretary of Labor, except those found in 29 CFR 1910.13, 1910.14, 1910.15, and 1910.16 (ship repairing, shipbuilding, shipbreaking, and longshoring) will, after public hearing by the Utah agency be adopted and enforced by that agency. The plan sets forth a timetable for the proposed adoption of standards. The legislation will give the Utah Industrial Commission full authority to administer and enforce all laws, rules, and orders protecting employee safety and health in all places of employment in the State. It also proposes to bring the plan into conformity in procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; and procedures for variances and the protection of employees from hazards. The proposed legislation will ensure employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations before, during, and after inspections; protection of employees against discharge or discrimination in terms and conditions of employment; notice to employees of their protections and obligations; adequate safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers; and employer's right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings.

(b) Included in the plan is a statement of the Governor's support for the proposed legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the Constitution and laws of Utah. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 of this chapter upon enactment of the proposed legislation by the State legislature.

(c) The plan includes the following documents as of the date of approval:

(1) The plan with appendixes.

(2) A letter from Carlyle F. Gronning, Chairman of the Utah Industrial Commission to the Office of State Programs with an attached memo sheet of clarifications dated October 27, 1972.

(3) A letter from Carlyle F. Gronning to the Office of State Programs dated December 3, 1972, clarifying issues raised in the plan review.

(4) A letter from Carlyle F. Gronning to the Office of Federal and State Operations dated December 11, 1972, clarifying the remaining issues raised in the review process.

1952.111—WHERE THE PLAN MAY BE INSPECTED

A copy of the complete Utah plan may be inspected and copied during normal business hours at the Utah Industrial Commission, Occupational Safety and Health Administration, 444 South Fourth East, Salt Lake City, UT 84111. A copy of the complete Utah plan may also be inspected and copied during normal business hours at (a) the Office of Assistant Regional Director, Occupational Safety and Health Administration, U.S. Department of Labor, Federal Building, Room 15010, Post Office Box 3588, 1961 Stout Street, Denver, CO 80202; and (b) United States Department of Laobr, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800 1726 M Street, NW., Washington, D.C. 20210.

[39 F.R. 32905, September 12, 1974.]

1952.112—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with Utah effective September 4, 1974, and based on a determination that Utah is operational in the issues covered by the Utah occupational safety and health plan, Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in the issues covered under 29 CFR Part 1910 and 29 CFR Part 1926. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: Complaints about violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660 (c); Federal standards promulgated subsequent to the agreement where necessary to protect employees as in the case of standards promulgated under section 6(c) of the Act (29 U.S.C. 655(c)), in issues covered under 29 CFR Part 1910 and 29 CFR Part 1926, until such time as Utah shall have adopted equivalent standards in accordance with 29 CFR Part 1953, Subpart C; and Investigation and inspection for the purpose of evaluation of the Utah plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Assistant Regional Director for Occupational Safety and Health will make a prompt recommendation for resumption of the appropriate level of exercise of Federal enforcement authority under section 18(e), of the Act (29 U.S.C. 667 (e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in the State of Utah.

[39 F.R. 36479, October 10, 1974.]

1952.113—DEVELOPMENTAL SCHEDULE

The Utah plan is developmental. The following is the schedule of developmental steps provided by the plan:

(a) Introduction of resulting legislation in State Legislature during January 1973.

(b) Expected enactment of the enabling legislation by March 1973.

(c) Formal adoption of Federal standards and revocation of existing Utah State standards by September 1, 1973.

(d) Adoption of safety standards for agriculture by September 1, 1974.

(e) Formal adoption of Parts 1903, 1904, and 1905 of this chapter as rules and regulations of Utah by July 1974.

(f) Effective date of new standards, commencement of State enforcement by September 1973.

(g) A management information system by July 1, 1974.

[38 F.R. 1178, Jan. 10, 1973.]

1952.114—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with the requirements of 29 CFR 1952.110, the Utah State poster was approved by the Assistant Secretary on January 7, 1976.

(b) In accordance with § 1952.113(g), the State has developed and implemented a Management Information System.

[41 F.R. 1904, January 13, 1976.]

(c) In accordance with the requirements of 29 CFR 1952.110(b), the Utah Occupational Safety and Health Act, (Chapter 9 of title 35 of the Utah State Code) effective July 1, 1973, was approved July 30, 1974.

(d) In accordance with the requirements of 29 CFR 1952.113(e), State regulations substantially identical to 29 CFR Parts 1903, 1904, and 1905, have been adopted by the State and approved by the Assistant Secretary on March 3, 1976.

[41 F.R. 10064, March 9, 1976.]

(e) The State has developed and implemented rules of procedure for its review commission, consistent with present law.

[41 F.R. 15005, April 9, 1976.]

(f) The State plan has been amended to include an Affirmative Action Plan outlining the State's policy of equal employment opportunity.

(g) In accordance with 29 CFR 1952.113 Utah has promulgated standards at least as effective as comparable Federal standards as set out in 41 FR 11635, regarding all issues covered by the plan.

[41 F.R. 46599, October 22, 1976.]

(h) In accordance with § 1902.34 of this chapter, the Utah occupational safety and health plan was certified, effective as of the date of publication on November 19, 1976, as having completed all developmental steps specified in the plan as approved on January 4, 1973 on or before January 3, 1976.

[41 F.R. 51014, November 19, 1976.]

SUBPART F—WASHINGTON

1952.120—DESCRIPTION OF THE PLAN

(a)

(1) The plan identifies the Department of Labor and Industries as the State agency designated to administer the plan throughout the State. It adopts the definition of occupational safety and health issues expressed in § 1902.2(c)(1) of this chapter. The plan contains a standards comparison of existing and proposed State standards with Federal standards. All standards, except those found in 29 CFR Parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking and longshoring) will be adopted and enforced after public hearings within 1 year after the standards are found to be at least as effective by the Secretary of Labor.

(2) The plan provides a description of personnel employed under a merit system; the coverage of employees of political subdivisions, procedures for the development and promulgation of standards, including standards for protection of employees against new and unforeseen hazards; and procedures for prompt restraint or elimination of imminent danger situations.

(b)

(1) The plan includes proposed draft legislation to be considered by the Washington Legislature during its 1973 legislative session creating a new chapter in Title 49, Revised Code of Washington and repealing existing provisions, to bring it into conformity with the requirements of Part 1902. Under the proposed legislation the Department of Labor and Industries will have full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State. The legislation further proposes to bring the State into conformity in areas such as variances and protection of employees from hazards.

(2) The legislation is also intended to insure inspections in response to complaints; give employer and employee representatives an opportunity to accompany inspectors in order to aid inspections: notification of employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review: notification of employees of their protections and obligations; protection of employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets: provision for prompt notice to employers and employees of alleged violations of standards and abatement requirements: effective sanctions against employers for violations of standards and orders: employer right of review to the Board of Industrial Insurance Appeals and then to the courts, and employee participation in review proceedings. The plan also proposes to develop a program to encourage voluntary compliance by employers and employees, including provision for on-site consultations.

(c) The plan includes a statement of the Governor's support for the legislation and a legal opinion from the State attorney general that the legislation will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the Constitution and laws of Washington. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 upon enactment of the proposed legislation.

(d) The Washington plan includes the following documents as of the date of approval:

(1) The plan description documents including draft legislation and appendices in two volumes;

(2) Appendix 18, Standards Comparison;

(3) Letter from William C. Jacobs, Director, Department of Labor and Industries to James W. Lake, Regional Administrator, OSHA, August 11, 1972, submitting justifications for discretionary sanctions for serious violations and changing section 18(5) of WISHA to conform to the mandatory civil penalty for posting violations under OSHA:

(4) Letter from John E. Hillier, Supervisor of Safety, Department of Labor and Industries to Thomas C. Brown, Director, Office of Federal and State Operations, August 19, 1972, submitting justifications on the sanction system and the review procedure in the Washington plan;

(5) Letter from William C. Jacobs to Thomas C. Brown, September 19, 1972, justifying the sanction system as proposed by Washington;

(6) Letter from John E. Hillier to Thomas C. Brown, October 2, 1972, providing a detailed explanation of the procedure for review of citations proposed by Washington:

(7) Letter from Stephen C. Way, Assistant Attorney General to Thomas C. Brown, October 19, 1972, clarifying several issues raised during the review process including revision in the draft legislation:

(8) Letter from Stephen C. Way to the Assistant Secretary, January 5, 1973, clarifying most of the remaining issues raised during the review process;

(9) Letter from William C. Jacobs to the Assistant Secretary, January 12, 1973, revising the penalty structure in the draft legislation.

(e) The public comments will also be available for inspection and copying with the plan documents.

1952.121—WHERE THE PLAN MAY BE INSPECTED

A copy of the complete plan may be inspected and copied during normal business hours at the following locations:

Supervisor, Division of Safety, Department of Labor and Industries, 308 East Fourth Avenue, Post Office Box 207, Olympia, WA 93504;

Assistant Regional Director, Occupational Safety and Health Administration, Room 1813, Smith Tower Building, 506 Second Avenue, Seattle, WA 98104; United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210.

[39 F.R. 4661, February 6, 1974.]

1952.122—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter under which an agreement has been entered into with Washington, effective May 30, 1975, and based on a determination that Washington is operational in the issues covered by the Washington occupational safety and health plan, the U.S. Department of Labor will continue to exercise authority, among other things, with regard to: Federal standards promulgated subsequent to the agreement where necessary to protect employees as in the case of temporary emergency standards promulgated under section 6(c) of the Act (29 U.S.C. 655(c)) in issues covered under 29 CFR Part 1910 and 29 CFR Part 1926, until such time as Washington shall have adopted equivalent standards in accordance with 29 CFR Part 1953, Subpart C; Federal standards contained in the issues covered by Subpart B—Ship repairing, Shipbuilding, Shipbreaking and Longshoring, 29 CFR 1910.13 through 1910.16, as they relate to employment under the exclusive jurisdiction of the Federal government on the navigable waters of the United States, including dry docks and marine railways; complaints about violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660(c)); and investigations and inspections for the purpose of evaluation of the Washington plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). Discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910 and 29 CFR Part 1926. The Assistant Regional Director of Occupational Safety and Health will make a prompt recommendation for resumption of exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in the State of Washington.

[40 F.R. 55857, December 2, 1975.]

1952.123—DEVELOPMENTAL SCHEDULE

The Washington State plan is developmental. The following is the developmental schedule as provided by the plan:

(a) Introduction of the legislation in the 1973 Legislative Session:

(b) Public hearings and promulgation of occupational safety and health standards within 1 year after the proposed standards are found to be at least as effective by the Secretary of Labor:

(c) Promulgation and adoption of rules and regulations concerning procedures for assuming all obligations and functions arising from the legislation within 1 year of its effective date:

(d) Development and implementation of a data processing system (M.I.S.) 6 months after approval of the plan:

(e) Achievement of training objectives by December 31, 1973:

(f) Upgrading of the Division of Safety personnel following legislative action on recommendations submitted to the 1973 Legislature.

[38 F.R. 2421, Jan. 26,1973.]

1952.124—COMPLETION OF DEVELOPMENTAL STEPS AND CERTIFICATION

(a) In accordance with the requirements of § 1952.123(a) the Washington Industrial Safety and Health Act of 1973, hereinafter referred to as WISHA (S.B. 2886, RCW Chapter 49.17), signed by the Governor on March 9, 1973, effective on June 7, 1973, was approved July 3, 1974 (39 FR 25326).

(b) In accordance with the requirements of § 1952.10, the Washington State Poster submitted on October 6, 1975, was approved by the Assistant Secretary on December 17, 1975.

[40 F.R. 59345, December 23, 1975.]

(c) The Washington State compliance operations manual modeled after the Federal Field Operations Manual, was developed by the State and was approved by the Assistant Secretary on March 19, 1976. The manual was subsequently revised on July 23, October 20, and December 18, 1980 and was approved by the Assistant Secretary on January 26, 1982.

(d) In accordance with § 1952.123(c), Washington regulations covering Reassumption of Jurisdiction were adopted by June 7, 1974 and were approved by the Assistant Secretary on March 19, 1976.

[41 F.R. 12655, March 26, 1976.]

(e) In accordance with § 1952.123(e) Washington has completed the training as described in this section.

(f) In accordance with § 1952.123(d) Washington has developed and implemented a computerized Management Information System.

[41 F.R. 17548, April 27, 1976.]

(g) In accordance with § 1952.123(f) Washington has completed the upgrading of salaries of safety personnel.

[41 F.R. 23672, June 11, 1976.]

(h) In accordance with § 1952.123(c) Washington has adopted rules and regulations covering recordkeeping and reporting requirements.

[41 F.R. 51016, November 19, 1976.]

(i) An industrial hygiene operations manual, effective March 1, 1980, with revisions effective July 1 and September 21, 1981, modeled after the Federal manual was approved by the Assistant Secretary on January 26, 1982.

(j) In accordance with 29 CFR 1952.123(c), the Washington Department of Labor and Industries adopted administrative regulations providing procedures for conduct and scheduling of inspections, extension of abatement dates, variances, employee complaints of hazards and discrimination, posting of citations and notices, effective May 14, 1975 and revisions effective December 31, 1980 and July 22, 1981. Likewise, the Washington Board of Industrial Insurance Appeals adopted rules effective April 4, 1975 governing practice and procedure for contested cases with revision effective March 26, 1976. These regulations and rules were approved by the Assistant Secretary on January 26, 1982.

[47 F.R. 5889, Feburary 9, 1982]

(k) In accordance with § 1902.34 of this chapter, the Washington occupational safety and health plan was certified effective January 26, 1982, as having completed all developmental steps specified in the plan as approved on January 26, 1973 on or before January 26, 1976. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[47 F.R. 5891, February 9, 1982]

1952.125—CHANGES TO APPROVED PLANS

(a) In accordance with Subpart C of Part 1953 of this Chapter, the following Washington plan changes were approved by the Assistant Secretary on January 22, 1980.

(1) Walkaround pay for employee representatives. This supplement provides guidelines for compliance personnel when the employee representative's participation in the inspection is influenced by the employer's refusal to pay the representative for the time involved.

(2) Employee complaint processing procedures. This supplement provides guidelines for the scheduling, review, and investigation of employee complaints concerning alleged unsafe and unhealthful conditions at the workplace.

[45 F.R. 6543, January 29, 1980.]

SUBPART G AND H—RESERVED

SUBPART I—NORTH CAROLINA

1952.150—DESCRIPTION OF THE PLAN

(a) The Department of Labor has been designated by the Governor of North Carolina to administer the plan throughout the State. The Department of Labor has entered into an agreement with the State Board of Health whereby the State Board of Health is to assist the Department of Labor in the administration and enforcement of occupational health standards. However, full authority for the promulgation and enforcement of occupational safety and health standards remains with the Department of Labor. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in § 1902.2(c)(1) of this chapter. Moreover, it is understood that the plan will cover all employers and employees in the State except those whose working conditions are not covered by the Federal act by virtue of Section 4(b)(1) thereof, dockside maritime and domestic workers. The Department of Labor is currently exercising statewide inspection authority to enforce many State standards. The plan describes procedures for the development and promulgation of additional laws, and orders in all places of employment in the Stae; the procedures for prompt restraint or elimination of imminent danger conditions; and procedures for inspections in response to complaints.

(b) The plan includes proposed draft legislation to be considered by the North Carolina General Assembly during its 1973 session. Such legislation is designed to implement major portions of the plan and to bring it into conformity with the requirements of Part 1902 of this chapter.

(c) Under this legislation, all occupational safety and health standards and amendments thereto which have been promulgated by the Secretary of Labor, except those found in Parts 1915, 1916, 1917, and 1918 of this chapter (ship repairing, shipbuilding, shipbreaking, and longshoring) will be adopted upon ratification of the proposed legislation. Enforcement of such standards will take place 90 days thereafter.

(d) The legislation will give the Department of Labor full authority to administer and enforce all laws, rules and orders protecting employee safety and health in all places of employment in the State. It also proposes to bring the plan into conformity in procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; and procedures for variances.

(e) The proposed legislation will insure employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations before, during, and after inspections: protection of employees against discharge or discrimination in terms and conditions of employment; notice to employees of their protections and obligations; adequate safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers; and employer's right to review of alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings.

(f) The Plan also provides for the development of a program to encourage voluntary compliance by employers and employees.

(g) The Plan includes a statement of the Governor's support for the proposed legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the constitution and laws of North Carolina. The Plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 upon enactment of the proposed legislation by the State legislature.

(h) The North Carolina Plan includes the following documents as of the date of approval:

(1) The Plan description document with appendixes.

(2) Telegram from the Governor of North Carolina, James E. Holshouser, Jr., expressing his full support for the Occupational Safety and Health Act of North Carolina and his anticipation of its passage during the 1973 session of the North Carolina General Assembly.

(3) Letter from W. C. Creel, Commissioner, North Carolina Department of Labor, to Mr. Thomas C. Brown, Director, Federal and State Operations, clarifying several issues raised during the review process.

(4) Also available for inspection and copying with the Plan documents will be the public comments received during the review process.

1952.151—WHERE THE PLAN MAY BE INSPECTED

A copy of the complete North Carolina plan may be inspected and copied during normal business hours at the North Carolina Department of Labor, Room 106, Labor Building, Corner of Salisbury and Edenton, Raleigh, N.C. 27602. A copy of the complete North Carolina plan may also be inspected and copied during normal business hours at (a) the Office of the Assistant Regional Director, Occupational Safety and Health Administration, Suite 587, 1371 Peachtree Street NE., Atlanta, GA 30309; and (b) United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210.

[39 F.R. 4661, February 6, 1974.]

1952.152—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(iii) of this chapter, the present level of Federal enforcement in North Carolina will not be diminished. Among other things, the U.S. Department of Labor will continue to inspect catastrophes and fatalities, investigate valid complaints under section 8(f), continue its target safety and target health programs, and inspect a cross-section of all industries on a random basis.

1952.153—DEVELOPMENTAL SCHEDULE

The North Carolina Plan is developmental. The following is the schedule of the developmental steps provided by the Plan:

(a) It is estimated that the draft bill will be enacted by April 1, 1973.

(b) The Federal standards will be adopted on the date the bill is ratified.

(c) A refresher course for inspectors will begin sixty (60) days after the enactment of the draft bill.

(d) Merit system examinations of current Department of Labor personnel will be completed within sixty (60) days after Federal acceptance of the State Plan.

(e) The hiring of new personnel in both the Department of Labor and the State board of health will begin thirty (30) days after the department is assured that State and Federal funds are available. Tentative plans provide for both agencies to be fully staffed within six (6) months after the enactment of the bill.

(f) All new personnel will receive official OSHA training in the National Institute of Training. Employment dates will generally correspond to dates established for the Institute schools.

(g) Employers and employees will be notified of the availability of consultative services within ninety (90) days after ratification of the draft bill.

(h) The Department of Labor will initiate a developmental plan for a "Management Information System" on the date of Plan approval. This program is to be fully implemented in ninety (90) days after enactment of the proposed legislation.

(i) The enforcement of standards will begin ninety (90) days after ratification of the draft bill.

(j) A State Compliance Operations Manual is to be completed ninety (90) days after ratification of the draft bill.

(k) The Commissioner will begin issuing administrative "rules and regulations" when necessary as stated in the draft bill ninety (90) days after ratification of the draft bill. Meanwhile, the Federal rules and regulations will be adopted and applied until the State rules and regulations are acceptable.

(l) Safety programs for State employees will begin one (1) year and ninety (90) days after ratification of the draft bill, with full implementation scheduled a year later.

(m) Safety programs for large counties and municipalities with over 10,000 population will be initiated ninety (90) days after draft bill ratification. Full implementation will occur one (1) year later.

(n) Safety programs for other counties and municipalities with 4,000 to 10,000 population will be initiated within two (2) years and ninety (90) days after Plan grant is approved. Full implementation will occur three (3) years after grant award.

(o) Safety programs for towns and other governing units having between 1,000 and 4,000 population will be initiated within two (2) years and ninety (90) days after Plan grant is approved, with full implementation within three years after grant award.

(p) A State "Safety and Health" poster will be prepared within ninety (90) days after ratification of the draft bill.

(q) The State of North Carolina will be fully operational with respect to agriculture 1 year and 90 days after enactment of the draft bill.

[38 F.R. 3041, Feb. 1, 1973.]

1952.154—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with § 1952.153(a) the Occupational Safety and Health Act of North Carolina (S.B. 342, Chapter 295) was enacted by the State legislature on May 1, 1973, and became effective on July 1, 1973.

(b) In accordance with § 1952.153(b), the North Carolina occupational safety and health standards identical to Federal standards (thru 12-3-74) have been promulgated and approved, as revised, by the Assistant Regional Director on March 11, 1975 (40 FR 11420).

[40 F.R. 18429, April 28, 1975.]

(c)

(1) In accordance with 1952.153(p) and the requirements of 29 CFR 1952.10, the North Carolina poster for private employers was approved by the Assistant Secretary on April 17, 1975.

(2) In accordance with § 1952.153(p) and the requirements of 29 CFR 1952.10, the North Carolina poster for public employees was approved by the Assistant Secretary on April 20, 1976.

[41 F.R. 17547, April 27, 1976.]

(d) In accordance with § 1952.153(q) full coverage of agricultural workers by the North Carolina Department of Labor began on April 1, 1974.

[41 F.R. 22562, June 4, 1976.]

(e) The State plan has been amended to include an Affirmative Action Plan in which the State outlines its policy of equal employment opportunity.

[41 F.R. 41082, September 21, 1976.]

(f) In accordance with § 1952.153(c) all North Carolina compliance personnel have completed refresher training courses.

(g) In accordance with § 1952.153(d) all occupational safety and health personnel in the North Carolina Department of Labor are covered by the State merit system which the U.S. Civil Service Commission (by letter dated January 22, 1976) has found to be in substantial conformity with the "Standards for a Merit System of Personnel Administration." Agreement with the North Carolina Department of Human Resources specifies that all health personnel cooperating in the State occupational safety and health program are likewise covered by the State merit system.

(h) In accordance with § 1952.153(f) all North Carolina compliance personnel have attended basic training courses at the OSHA Institute in Chicago.

(i) In accordance with § 1952.153(g) the North Carolina Department of Labor has publicly disseminated information on the availability of consultative services.

(j) In accordance with § 1952.153(h) a manual Management Information System which provides the quarterly statistical reports required by the Assistant Secretary as well as internal management data has been developed and is fully operational.

(k) In accordance with § 1952.153(i) State enforcement of standards began on July 1, 1973.

[41 F.R. 43896, October 5, 1976.]

(l) In accordance with § 1952.153(k) the State has promulgated the following administrative "rules and regulations":

(1) Regulation 7B.0100: Inspections, Citations and Proposed Penalties.

(2) Regulation 7B.0300: Recording and Reporting of Occupational Injuries and Illnesses.

(3) Regulation 7B.0400: Rules of Practice for Variances.

(4) Regulation 7B.0500: Rules of Procedure for Promulgating, Modifying or Revoking Occupational Safety and Health Standards.

(5) Regulation 7B.0700: State Advisory Council on Occupational Safety and Health.

[41 F.R. 43897, October 5, 1976.]

(m) The North Carolina Occupational Safety and Health Review Board has adopted Rules of Procedure governing its review of contested cases.

(n) In accord with § 1952.153(l), Safety programs for State employees were initiated and implemented.

(o) In accord with § 1952.153(m), Safety programs for large counties and municipalities with over 10,000 population were initiated and implemented.

(p) In accord with § 1952.153(n), Safety programs for other counties and municipalities with 4,000 to 10,000 population were initiated and implemented.

(q) In accord with § 1952.153(o), Safety programs for towns and other governing units having between 1,000 and 4,000 population were initiated and implemented.

(r) In accord with § 1952.153(e) and § 1902.3(d) the North Carolina occupational safety and health program has been fully staffed.

[41 F.R. 43898, October 5, 1976.]

(s) In accordance with § 1952.153(j) the State has developed and amended a Compliance Operations Manual which defines the procedures and guidelines to be used by the North Carolina compliance staff in carrying out the goals of the program.

[41 F.R. 43899, October 5, 1976.]

(t) In accordance with § 1902.34 of this chapter, the North Carolina occupational safety and health plan was certified, effective October 5, 1976, as having completed on or before March 31, 1976 all developmental steps specified in the plan as approved on January 26, 1973.

[41 F.R. 43901, October 5, 1976.]

SUBPART J—IOWA

1952.160—DESCRIPTION OF PLAN

(a)

(1) The plan identifies the Bureau of Labor as the State agency designated to administer the plan throughout the State. Its responsibilities include both occupational safety and occupational health, the latter on a developmental basis. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(i). Under existing occupational safety and health legislation, effective July 1, 1972, Iowa has adopted as interim standards all the occupational safety and health standards and amendments thereto which had been promulgated by the Secretary of Labor, except those found in 29 CFR Parts 1915, 1916, 1917 and 1918 (ship repairing, ship building, ship breaking and longshoring). Hearings have been held on the adoption, as permanent standards, of the standards in 29 CFR Parts 1910 and 1926.

Under its existing legislation, the Bureau of Labor has exercised statewide inspection authority to enforce State standards which are identical to Federal standards. The legislation covers all employers including the State and its political subdivisions and gives the Iowa Bureau of Labor full authority to administer and enforce all laws, rules, and orders protecting employee safety and health in all places of employment in the State.

(2) The legislation contains procedures for the promulgation of standards, including standards for the prompt protection of employees against new and unforeseen hazards; furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; procedures for granting temporary and permanent variances; and for the protection of employees from hazards. The law provides for inspections including inspections in response to complaints; ensures employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations before, during and after inspections; protection of employees against discharge or discrimination in terms or conditions of employment through court suits brought by the Bureau of Labor; notice to employees of their protections and obligations under the State law; imminent danger abatement through court injunctions; safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers; employer right to review of alleged violations, abatement periods, and proposed penalties with an opportunity for employee participation as parties; and employee review of any citation issued to the employee, in review proceedings before the independent Review Commission.

(3) The plan is developmental in the establishment of a compliance program for agriculture, mercantile and service employees; development of an occupational health program; developing a management information system; and hiring and training of staff under the existing State merit system.

(b) Included in the plan is a statement of the Governor's support for the plan and a statement of legal opinion that the legislation will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the Constitution and laws of Iowa. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 at the end of three years after the commencement of operations under the plan.

(c) The plan includes the following documents as of the date of approval:

(1) The plan document with appendices;

(2) Letters from Jerry L. Addy, Commissioner of Labor, dated January 2, 1973, and March 21, 1973, with clarifications and modifications of the plan;

(3) Iowa has also submitted the following regulations adopted by the State:

(a) Chapter 3 of the Iowa Bureau of Labor Administrative Rules dealing with inspections, citations, and proposed penalties, adopted July 25, 1972;

(b) Chapter 4 of the Iowa Bureau of Labor Administrative Rules dealing with recording and reporting occupational injuries and illnesses adopted July 11, 1973, and amended July 25, 1972;

(c) Chapter 5 of the Iowa Bureau of Labor Administrative Rules dealing with rules of practice for variances, limitations, variations, tolerances, and exemptions adopted July 25, 1972, and amended October 5, 1972.

These adopted rules and regulations which were not part of the plan as originally submitted will be evaluated in accordance with the review of completions of developmental steps in State plans.

1952.161—WHERE THE PLAN MAY BE INSPECTED

A copy of the complete Iowa plan may be inspected and copied during normal business hours at the Iowa Bureau of Labor, State House, East 7th and Court Avenues, 4th Floor, Des Moines, Iowa 50319; Assistant Regional Director, Occupational Safety and Health Administration, U.S. Department of Labor, Room 300, Waltower Building, 823 Walnut Street, Kansas City, Missouri 64106; and United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210.

[39 F.R. 4661, February 5, 1974.]

1952.162—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with Iowa, effective April 29, 1982, and based on a determination that Iowa is operational in the issues covered by Iowa occupational safety and health plan, discretionary Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910, 29 CFR Part 1926, and 29 CFR Part 1928. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to complaints filed with the U.S. Department of Labor alleging discrimination under Section 11(c) of the Act (29 U.S.C. 660(c)); standards in the maritime and longshoring issues covered by 29 CFR Parts 1915, 1916, 1917, 1918, and 1919 (ship building, shipbreaking, ship repairing, longshoring and gear certification), which issues have been specifically excluded from coverage in the Iowa plan; enforcement relating to any contractors or subcontaactors on any Federal establishment where the State cannot obtain entry; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; enforcement in situations where the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of the agreement; and investigations for the purpose of the evaluation of the Iowa plan under Sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667 (e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Iowa.

[47 F.R. 25325, June 11, 1982]

1952.163—DEVELOPMENTAL SCHEDULE

The Iowa State plan is developmental. The following is the developmental schedule as amended and provided by the plan:

(a) Legislation becomes effective (SF 1218—Chapter 88 Iowa Code), July 1972.

(b) Corrective Amendments to Chapter 88 becomes effective, July 1975.

(c) Adoption of Federal Standards as temporary State Standards, July 1972.

(d) Adoption of Federal Standards as permanent State standards, July 1973.

(e) Update of State Standards to remain identical with Federal Standards in issues covered, (ongoing).

(f) Complete hiring of additional staff, April 1975.

(g) Complete basic training of all staff, May 1975.

(h) Advanced training of all staff (ongoing).

(i) Commencement of Compliance activities, July 1972.

(j) Development of Compliance programs in agricultural, mercantile and services issues, August 1975.

(k) Development of on-site consultative inspection program, September 1975.

(l) Development of approved State Poster, August 1975.

(m) Development of a program of education and training of employers and employes, October 1974.

(n) Development of a manual Management Information System, July 1972.

(o) Development of an automated Management Information System, (ongoing).

(p) Modification of State Compliance Manual, November 1975.

[40 F.R. 36565, August 21, 1975.]

1952.164—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with the requirements of § 1952.10, the Iowa State poster was approved by the Assistant Secretary on August 26, 1975.

(b) In accordance with the requirements of § 1952.163(b), the Iowa Occupational Safety and Health Act of 1972 (Iowa S.F. 1218—Chapter 88) is amended by Iowa Act S.F. 9[illegible], with an effective date of July 1, 1975.

[40 F.R. 40156, September 2, 1975.]

(c) In accordance with the commitment contained in § 1952.163(a), the State of Iowa enacted occupational safety and health enabling legislation which became effective on July 1, 1972.

(d) In accordance with the commitment contained in § 1952.163(f), the State of Iowa, as of April 24, 1974, hired a sufficient number of qualified safety and health personnel under the approved Merit Employment Department system.

(e) In accordance with the commitment contained in § 1952.163(g), all basic training of Iowa compliance personnel was completed as of May 9, 1975.

(f) In accordance with the commitment contained in § 1952.163(e), a program of education and training of employers and employees was developed with local community colleges as of October 1974.

(g) In accordance with the commitment contained in § 1952.163(h), the Iowa Bureau of Labor developed an approved manual Management Information System as of July 1972.

(h) In accordance with the commitment contained in § 1952.163(k), the Iowa Bureau of Labor initiated an approved program of on site consultation as of September 1975.

(i) In accordance with the commitment contained in § 1952.163(c), the State of Iowa adopted Federal standards as interim State standards under Chapter 88 of the Iowa Code, effective on July 1, 1972.

(j) In accordance with the commitment contained § 1952.163(d), the State of Iowa promulgated Federal occupational safety and health standards (29 CFR Parts 1910 and 1926) as permanent State Standards as of August 16, 1973.

(k) In accordance with the commitment contained in § 1952.163(i), the Iowa Bureau of Labor began its compliance activities in July 1973.

(l) In accordance with the commitment contained in § 1952.163(j), the Iowa Bureau of Labor implemented compliance programs in the agriculture, mercantile, and service issues by July 1975.

[F.R. 23670, June 11, 1976.]

(m) In accordance with 1902.34 of this chapter, the Iowa safety and health plan program was certified on September 14, 1976 as having completed all developmental steps in its plan with regard to those occupational safety and health issues specified in the plan on or before July 20, 1976.

(n) Amendment to Chapter 4, Recording and Reporting Occupational Injuries and Illnesses. Clarifications of the Iowa recordkeeping and reporting rules.

(o) Amendment to Chapter 6, IOSH Consultative Services and Training. Detailed procedures for safety consultants when they find a serious or imminent danger hazard.

(p) Modifications to the Iowa Plan. Minor revisions to the Iowa plan dealing with present staffing, position statements, legislative changes, and currrent responsibilities of divisions in the Iowa Bureau of Labor.

[44 F.R. 11067, February 27, 1979.]

SUBPART K—CALIFORNIA

1952.170—DESCRIPTION OF THE PLAN

(a) The State's program will be enforced by the Division of Industrial Safety of the Department of Industrial Relations of the California Agriculture and Services Agency Current safety and health standards will be continued unless amended by a State occupational safety and health standards board to be created. This board will take the amending action necessary to assure that State standards are as effective as those established under the Federal program. Appeals from the granting or denial of requests for variances will also come within the jurisdiction of this board. Administrative adjudications will be the responsibility of the California Occupational Safety and Health Appeals Board.

(b) The State program is expected to extend its protection to all employees in the State (including those employed by it and its political subdivisions) except those employed by Federal agencies, certain maritime workers, household domestic service workers, and railroad workers not employed in railroad shops. (It is assumed that activities excluded from the Occupational Safety and Health Act's jurisdiction by section 4(b)(1) 29 U.S.C. 653(b)(1) will also be exluded from the State's jurisdiction under this plan.)

(c) The plan includes procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; and procedures for variances and the protection of employee from hazards. It provides employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations before, during, and after inspections, protection of employees against discharge or discrimination in terms and conditions of employment, notice to employees or their representatives when no compliance action is taken upon complaints, including informal review, notice to employees of their protections and obligations, prompt notice to employers and employees of alleged violations of standards and abatement requirements, effective remedies against employers, and the right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings; procedures for prompt restraint or elimination of imminent danger condtions, and procedures for inspection in response to complaints.

(d) Based on an analysis of California's standards comparison, the State's standards corresponding to subparts F and K of this part, and § 1910.263 of this (chapter) in subpart R of this part, of the OSHA standards have been determined to be at least as effective. These State standards contain no product standards. As indicated in § 1952.173, the State's developmental schedule provides that the remaining subparts will be covered by corresponding State standards which are at least as effective within 1 year of plan approval.

(e) The plan includes a statement of the Governor's support for the proposed legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the constitution and laws of California. The plan sets out goals and provides a timetable for bringing it into full conformity with part 1902 of this chapter upon enactment of the proposed legislation by the State legislature. A merit system of personnel administration will be used. In addition, efforts to achieve voluntary compliance by employers and employees will include both on-and off-site consultations. The plan is supplemented by letters dated March 21, 1973, and April 10, 1973, from A. J. Reis, Assistant Secretary for Occupational Safety and Health of the Agriculture and Service Agency of the State of California.

1952.171—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210; Regional Office, Occupational Safety and Health Administration, Room 9470, Federal Office Building, 450 Golden Gate Avenue, San Francisco, Calif. 94102; State of California, Agriculture and Services Agency, 1220 "N" Street, Room 114, Sacramento, Calif. 95814; Department of Industrial Relations, 455 Golden Gate Avenue, Room 999, San Francisco, Calif. 94102; and Division of Industrial Safety, 3460 Wilshire Boulevard, Room 916, Los Angeles, Calif. 90010.

[39 F.R. 4661, February 6, 1974.]

1952.172—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter under which an agreement has been entered into with California, effective September 30, 1975, and based on a determination that California is operational in the issues covered by the California occupational safety and health plan, discretionary Federal enforcement activity under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910 and 29 CFR Part 1926. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor about violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660(c)); Federal standards promulgated subsequent to the agreement where necessary to protect employees, as in the case of temporary emergency standards promulgated under section 6(c) of the Act (29 U.S.C. 655(c)), in the issues covered under the plan and the agreement until such time as California shall have adopted equivalent standards in accordance with Subpart C of 29 CFR Part 1953; Federal standards contained in the issues covered by Subpart B, 29 CFR Part 1910, Ship repairing, Shipbuilding, Shipbreaking, and Longshoring, insofar as they relate to employment under the exclusive jurisdiction of the Federal Government on the navigable waters of the United States; enforcement activity regarding private employers on Federal installations where the Federal agency has claimed exclusive Federal jurisdiction, challenged State jurisdiction and refused entry, such Federal enforcement to continue at least until the jurisdictional question is resolved at the National level between the Occupational Safety and Health Administration and the cognizant Federal agency; and investigations and inspections for the purpose of the evaluation of the California plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Assistant Regional Director for Occupational Safety and Health will make a prompt recommendation for resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree necessary to assure occupational safety and health protection to employees in the State of California.

[41 F.R. 1904, January 13, 1976.]

1952.173—DEVELOPMENTAL SCHEDULE

(a) Within 1 year following plan approval, legislation will be enacted authorizing complete implementation of the plan and enforcement rules and regulations will be promulgated, and an operations manual be completed.

(b) By October 31, 1975, present standards will be amended or new standards promulgated which are as effective and comprehensive as those set forth in Chapter XVII of this Title 29 of the Code of Federal Regulations;

[40 F.R. 18426, April 28, 1975.]

(c) An exception to paragraphs (a) and (b) of this section exists relative to radiation machines and other non-Atomic Energy Act sources of radiation. The standards and enforcement program in this area will be developed within 2 years of plan approval.

(d) Inter-agency agreements to provide technical support to the program will be fully functioning within 1 year of plan approval.

(e) Inservice training plans for enforcement personnel will be developed within 18 months of plan approval.

(f) A program of consultation with employers and employees will be functioning within 6 months of plan approval.

(g) Within 3 years of plan approval all developmental steps will be fully implemented.

(Sec. 18, Public Law 91-596, 84 Stat. 1608 (29 U.S.C. 667).)
[38 F.R. 10717, May 1, 1973]

(h) The Inspection Scheduling System will be fully implemented and in operation March 31, 1975.

[40 F.R. 40155, September 2, 1975.]

1952.174 COMPLETION OF DEVELOPMENTAL STEPS AND CERTIFICATION

(a)

(1) In accordance with § 1952.173 (a), the California Occupational Safety and Health Act (Assembly Bill No. 150) was enacted in September 1973 and filed with the California Secretary of State October 2, 1973.

(2) The following difference between the program described in § 1952.170(a) and the program authorized by the State law is approved: Authority to grant or deny temporary variances rests with the Division of Industrial Safety, and such authority for permanent variances is with the Occupational Safety and Health Standards Board. The Board hears appeals from the Division of Industrial Safety's decisions or temporary variances.

(b) In accordance with § 1952.173 (d) formal interagency agreements were negotiated and signed between the Department of Industrial Relations and the State Department of Health (June 28, 1973) and between the State Department of Industrial Relations and the State Fire Marshal (August 14, 1973).

(c) In accordance with § 1952.173 (f), a program of consultation with employers and employees was fully functioning in January 1974.

[40 F.R. 18426, April 28, 1975.]

(d) In accordance with the requirements of § 1952.10, the California State poster was approved by the Assistant Secretary on August 27, 1975.

(e) The Occupational Safety and Health Standards Board began functioning in January 1974.

(f) The initial major training and education of employers, employees and the general public was completed by 1974.

(g) In accordance with § 1952.173 (a), recordkeeping and reporting requirements were extended to State and local governments effective January 1, 1975.

(h) The Management Information System was established by November 1974.

[40 F.R. 40155, September 2, 1975.]

(i) The Occupational Safety and Health Appeals Board began functioning in early 1974. The Rules of Procedure for the Board were approved by the Assistant Secretary on November 19, 1975.

[40 F.R. 54425, November 24, 1975.]

(j) In accordance with § 1952.173(a), enforcement rules and regulations were promulgated by January 1974, and were approved by the Assistant Secretary on September 28, 1976.

(k) Recordkeeping and reporting requirements for private employers were promulgated by November 1974, and were approved by the Assistant Secretary on September 28, 1976.

(l) In accordance with § 1952.173(h), the Inspection Scheduling System was fully implemented and in operation by June 1975.

(m) In accordance with § 1952.173(a), an operations manual was published, and was approved by the Assistant Secretary on September 28, 1976.

[41 F.R. 43404, October 1, 1976.]

(n) In accordance with § 1952.173(e), in-service training Programs for safety and health enforcement personnel were implemented within 18 months of plan approval.

[41 F.R. 51013, November 19, 1976.]

(o) Enforcement of standards pertaining to temporary labor camps was implemented in March 1977.

[42 F.R. 37549, July 22, 1977.]

(p) In accordance with § 1903.34 of this chapter, the California occupational safety and health plan was certified, effective August 12, 1977, as having completed all developmental steps specified in the plan as approved on April 24, 1973, on or before June 1, 1976, with the exception that temporary labor camp standards development and enforcement program was completed on March 11, 1977.

[42 F.R. 41858, August 19, 1977.]

1952.175 CHANGES TO APPROVED PLANS

(a) In accordance with Subpart E of Part 1953 of this Chapter, the California carcinogen program implemented on January 1, 1977, was approved by the Assistant Secretary on March 6, 1978.

[43 F.R. 9806, March 10, 1978.]

(b) On Januray 1, 1978, the California Department of Industrial Relations became the agency designated to administer the California Occupational Safety and Health Plan.

[44 F.R. 36384, June 22, 1979.]

(c) In accordance with Subpart C of Part 1953, of this Chapter, California amended its employer recordkeeping and reporting requirements effective November 4, 1978, so as to provide employee access to the employer's log and summary of occupational injuries and illnesses.

[45 F.R. 8594, February 8, 1980.]

(d) In accordance with Subpart E of Part 1953 of this Chapter, California's liaison with the Occupational Health Centers, implemented on April 25, 1979, was approved by the Assistant Secretary on July 25, 1980.

(e) In accordance with Subpart E of Part 1953 of this Chapter, the California Hazard Alert System, implemented in July, 1979, was approved by the Assistant Secretary on July 25, 1980.

[45 F.R. 51776, August 5, 1980]

(f) In accordance with Subpart E of 1953 of this Chapter, the revised stratification of the Safety Engineer Series, adopted by California on July 1, 1979, was approved by the Assistant Secretary on January 12, 1981.

[46 F.R. 3861, January 16, 1981]

SUBPART L AND M—RESERVED

SUBPART N—MINNESOTA

1952.200—DESCRIPTION OF THE PLAN

(a) The Department of Labor and Industry is the State agency designated by the Governor to administer the plan throughout the State. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). The commissioner of the Department of Labor and Industry adopted Federal standards promulgated as of October 1972, effective in Minnesota February 1973. The commissioner will continue to adopt Federal standards and will retain those Minnesota standards not covered by Federal standards. The plan contains a list of the Federal standards adopted and the State standards that will be retained. These standards will be enforced according to current legislative authority in Minnesota prior to the effective date of Minnesota's enabling legislation submitted as part of the plan.

(b)

(1) The plan includes legislation enacted by the Minnesota legislature during its 1973 session. Under the legislature the Department of Labor and Industry will have full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State, including coverage of public employees with the exception of maritime workers in the areas of exclusive Federal jurisdiction, employees of the United States, and employees whose working conditions are regulated by Federal agencies other than the U.S. Department of Labor under the provisions of section 4(b)(1) of the Occupational Safety and Health Act of 1970.

(2) The legislation further proposed to bring the plan into conformity with the requirments of 29 CFR, part 1902 in areas such as procedures for granting or denying temporary and permanent variances by the commissioner; protection of employees from hazards; procedures for the development and promulgation of standards by the commissioner, including emergency temporary stnadards; and procedures for prompt restraint or elimination of imminent danger situations by issuance of a "red-tag" order effective for 3 days as well as by court injunction.

(3) The legislation is also intended to insure inspections in response to complaints; give employer and employee representatives an opportunity to accompany inspectors in order to aid inspections and that loss of any privilege or payment to an employee as a result of aiding such inspection would constitute discrimination; notification of employees or their representatives where no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protections and obligations; protection of employees against discharge or discrimination in terms and conditions of employment by filing complaints with the commissioner and hearings by the review commission; adequate safeguards to protect trade secrets; provision for prompt notice to employers and employees of alleged violations of standards and abatement requirements through the issuance and posting of citations; a system of sanctions against employers for violation of standards; employer right of review and employee participation in review proceedings before an independent review commission; and coverage of employees of the State and political subdivisions in the same manner as private employees.

(c) Included in the plan is a statement of the Governor's support for the legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the constitution and laws of Minnesota. The plan sets out goals and provides a timetable for bringing it into full conformity with part 1902 at the end of 3 years after commencement of operations under the plan. Personnel will be employed under the existing State merit system and the voluntary compliance program for onsite consultation for private and public employers meets the conditions set forth in the issues discussed in the Washington decision (38 F.R. 2421, January 26, 1973).

(d) The plan includes the following documents as of the date of approval:

(1) The plan document and appendices;

(2) Revised legislation, submitted January 25, 1973;

(3) Compliance manual and supplements to the plan document, February 15, 1973;

(4) Letters from the Department of Labor and Industry dated February 8, 1973, and April 9, 1973.

1952.201—WHERE THE PLAN MAY BE INSPECTED

A copy of the complete plan may be inspected and copies during normal business hours at the following locations; State Capitol Building, Legislative Reference Library, St. Paul, Minn. 55155; Assistant Regional Director, Occupational Safety and Health Administration, U.S. Department of Labor, 12th Floor, 300 South Wacker Drive, Chicago, Ill. 60606; and United States Department of Labor, Office of Federal and State Operations, Occupationbal Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210.

[39 F.R. 4661, February 6, 1974.]

1952.202—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with Minnesota, effective October 9, 1981, and based on a determination that Minnesota is operational in the issues covered by the Minnesota occupational safety and health plan, discretionary Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910, 29 CFR Part 1928 and 29 CFR Part 1926. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under Section 11(c) of the Act (29 U.S.C. 660(c)); standards in the maritime and longshoring issues covered by 29 CFR Parts 1915, 1916, 1917, 1918, and 1919 (ship building, shipbreaking, ship repairing, longshoring and gear certification), which have been specifically excluded from coverage under the plan; enforcement relating to any contractors or subcontractors on any Federal establishment where the State cannot obtain entry; enforcement of new Federal standards until the State adopts comparable standards; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; situations when the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of the agreement; and investigations and inspections for the purpose of the evaluation of the Minnesota plan under Sections 18 (e)and (f) of the Act (29 U.S.C. 667(e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Minnesota.

[47 F.R. 25326, June 11, 1982]

1952.203—DEVELOPMENTAL SCHEDULE

(a) Retraining of present occupational safety and health personnel during March–May 1973;

(b) Training sessions for public employers and employees during April–June 1973;

(c) Effective date of legislation, August 1, 1973;

(d) Regulations on variances, August 1973;

(e) Management information system, August 1973;

(f) Staff increases in Department of Labor and Industry and Department of Health 1973–74;

(g) Voluntary compliance program implemented by January 1975;

(h) Coverage and enforcement of standards regarding agriculture, July 1975.

[38 F.R. 15076, June 8, 1973]

1952.204—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with the requirements of § 1952.10, the Minnesota State poster was approved by the Assistant Secretary on March 7, 1975.

(b) In accordance with § 1952.203(g), the Minnesota voluntary compliance program became effective on January 1, 1975, and was approved by the Assistant Secretary on April 24, 1975.

[40 F.R. 18995, May 1, 1975.]

(c) State occupational safety and health personnel were retrained during March—May 1973.

(d) Training sessions for public employers and employees were held during April—June 1973.

(e) The Minnesota enabling legislation became effective on August 1, 1973. In addition, amendments to the legislation which concerned employee discrimination complaints and violations became effective on July 1, 1975, and a second amendment concerning the definition of a serious violation, posting of citations and penalties, right of employees to contest a citation and penalty, and furnishing copies of citations and notices of penalties to employer representatives and, in the case of a fatality, to the next of kin or a designated representative, became effective on August 1, 1975.

(f) Regulations on variances, were promulgated on February 20, 1974, and were approved with assurances by the Assistant Secretary on August 31, 1976.

(g) The management information system became operable in August 1973.

(h) Coverage and enforcement of agricultural standards commenced on July 1, 1975.

(i) The Rules of Procedure of the Minnesota Occupational Safety and Health Review Commission, Chapter 20, Minnesota Occupational Safety and Health Code, and regulations concerning inspections, citations, and proposed penalties, Chapter 21, Minnesota Occupational Safety and Health Code, were approved by the Assistant Secretary on August 31, 1976

(j) The downward revision of the projected increase in personnel for fiscal year 1976 due to a lesser than anticipated increase of funding by the Minnesota legislature, was approved by the Assistant Secretary as meeting current required staffing on August 31, 1976.

(k) The State poster approved on March 25, 1975 (40 FR 13211) which was revised in response to legislative amendments described above, to provide that citations and notices of penalties must be posted at or near the place of the alleged violation for 15 days or until the violation is corrected, whichever is later, and which lists additional Minnesota area offices, was approved by the Assistant Secretary on August 31, 1976.

[41 F.R. 36650, August 31, 1976.]

(l) In accordance with § 1902.34 of this chapter, the Minnesota occupational safety and health plan was certified, effective September 28, 1976, as having completed all developmental steps specified in the plan as approved on May 29, 1973, on or before June 30, 1976.

[41 F.R. 42659, September 28, 1976.]

SUBPART O—MARYLAND

1952.210—DESCRIPTION OF THE PLAN

(a) The Division of Labor and Industry in the Department of Licensing and Regulation is the State agency designated by the Governor to administer the plan throughout the State. The plan defines the covered occupational safety and health issues on the basis of Major Groups in the Standard Industrial Classification (SIC) Manual of the Office of Management and Budget of the Executive Office of the President. The Commissioner of the Division of Labor and Industry promulgated the Federal standards existing as of February 2, 1973. These standards were effective in Maryland as of March 8, 1973, and they will be enforced according to current State legislative authority prior to the effective date of Maryland's enabling legislation, July 1, 1973. Maryland also intends to adopt those Federal standards applicable to ship repairing, ship building, ship breaking and longshoring except where prohibited by exclusive Federal maritime jurisdiction. Subsequent revisions to Federal standards will be considered by the State Occupational Safety and Health Advisory Board which will make recommendations on adoption of at least as effective standards to the Commissioner within 6 months after Federal promulgation. Maryland also includes in its plan State boiler and elevator standards where applicable.

(b)

(1) The plan included draft legislation which has been passed by the State legislature and signed by the Governor. The legislation as enacted has been included as a supplement to the plan. Under the legislation, effective July 1, 1973, the Division of Labor and Industry in the Department of Licensing and Regulation has full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State, including coverage of public employees, with the exception of maritime workers in the areas of exclusive Federal jurisdiction; employees of the United States; and employees whose working conditions are protected under enumerated Federal laws.

(2) The legislation brings the plan into conformity with the requirements of 29 CFR Part 1902 in areas such as procedures for granting or denying temporary and permanent variances to rules, regulations or standards by the Commissioner; protection of employees from hazards including provision for medical examinations made available by the employer or at his cost; procedures for the development of standards by the Occupational Safety and Health Advisory Board; promulgation of these standards as recommended by the Commissioner; promulgation of emergency temporary standards by the Commissioner with referral to the Board to develop a permanent standard; procedures for prompt restraint or elimination of imminent danger situations by issuance of a "red-tag" order with court review as well as by court injunction.

(3) The legislation provides for inspections in response to complaints; gives employer and employee representatives an opportunity to accompany inspectors in order to aid inspections; notification of employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review; protection of employees against discharge or discrimination in terms and conditions of employment by filing complaints with the Commissioner who will seek court action; adequate safeguards to protect trade secrets; provision for prompt notice to employers and employees of alleged violations of standards and abatement requirements through the issuance and posting of citations; a system of sanctions against employers for violations of standards; employer right of review and employee participation in review proceedings before the Commissioner with subsequent judicial review; and coverage of employees of the State and political subdivisions in a separate program supervised by the Commissioner in accordance with the requirements described in the North Carolina decision (38 FR 3041).

(c) Included in the plan is a statement of legal opinion that the law, which was supported by the Governor in accordance with the requirements of Part 1902, meets the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the Constitution and laws of Maryland. The plan sets out goals and provides a time-table for bringing it into full conformity with Part 1902 at the end of three years after the commencement of operations under the plan. Personnel will be employed under the existing State merit system with the revisions in qualifications as stated in supplements to the plan, and the voluntary compliance program for on-site consultation meets the conditions set forth in the issues discussed in the Washington decision (38 F.R. 2421).

(d) The plan includes the following documents as of the date of approval.

(1) The plan document in two volumes.

(2) Maryland Occupational Safety and Health Act of 1973, effective July 1, 1973.

(3) "A Program for Control of Occupational Health Hazards in Maryland" by Johns Hopkins University Department of Environmental Medicine.

(4) Letters from the Division of Labor and Industry dated February 9, 1973; March 6, 1973; March 22, 1973; May 2, 1973 and May 21, 1973.

(5) Maryland's Administrative Procedure Act Article 41 sections 244 et seq.

1952.211—WHERE THE PLAN MAY BE INSPECTED

A copy of the complete plan may be inspected and copied during normal business hours at the following locations: Office of the Commissioner, Division of Labor and Industry, 203 East Baltimore Street, Baltimore, Maryland 21202; Assistant Regional Director, Occupational Safety and Health Administration, U.S. Department of Labor, Suite 410, Penn Square Building, 1317 Filbert Street, Philadelphia, Pa. 19107; and United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210.

[39 F.R. 4661, February 6, 1974.]

1952.212—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) of Title 29 Code of Federal Regulations, the present level of Federal enforcement in Maryland will not be diminished presently because of the developmental aspects of Maryland's enforcement program in the areas of occupational health and agriculture. Among other things the U.S. Department of Labor will continue to inspect catastrophes and fatalities, investigate valid complaints under section 8(f), continue its Target Safety and Target Health programs, and inspect a cross-section of all industries on a random basis.

1952.213—DEVELOPMENTAL SCHEDULE

(a) Occupational health study accepted and implementation begun July, 1973;

(b) Compliance Manual developed by July, 1973;

(c) Agreement with the Fire Marshal within 30 days of plan approval.

(d) Training in compliance procedures by August, 1973;

(e) Promulgation of standard-setting procedures, August, 1973;

(f) Inspection and enforcement program, except as provided in paragraph (k), in September, 1973;

(g) Staff of hearing examiners and review procedures set up in September, 1973;

(h) Variance procedures and emergency temporary standard-setting procedures promulgated October, 1973;

(i) Review of appeal procedures to see if it should be continued or modified, July, 1974;

(j) Review of job qualifications within one year of plan approval;

(k) Inspection and enforcement of agriculture standards by December 1974.

[41 F. R. 45564, October 15, 1976.]

(l) Fully operational occupational health program, July, 1975;

(m) Fully implemented public employees program, December, 1975;

(n) Management Information System, December, 1975;

(o) Adoption of maritime standards, December, 1975.

[38 F.R. 17834, July 5, 1973,]

1952.214—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with § 1953.4, the Maryland occupational safety and health standards were approved by the Assistant Regional Director on October 3, 1974.

(b) In accordance with the requirements of 29 CFR 1952.10, the Maryland State poster was approved by the Assistant Secretary on June 6, 1975.

(c) In accordance with the commitment expressed in § 1952.213(l), the State of Maryland developed and implemented an occupational health plan by December 31, 1975.

(d) In accordance with the commitment expressed in § 1952.213(n), the designee developed a fully operational Management Information System by May 1, 1975.

[41 F.R. 45564, October 15, 1976.]

(e) In accordance with 29 CFR 1952.213(d), training of Maryland compliance personnel in compliance procedure was completed by December 31, 1975.

(f) In accordance with 29 CFR 1952.213(f), the Maryland inspection and enforcement program was implemented by September 1973.

(g) In accordance with 29 CFR 1952.213(j), review of the appeal procedures to see if they should be continued or modified was conducted by the State by May 1975.

[42 F.R. 10987, February 25, 1977.]

(h) In accordance with 29 CFR 1952.213(b), Maryland completed development of a Compliance Manual.

(i) In accordance with 29 CFR 1952.213(e), the State has promulgated acceptable standard-setting procedures.

(j) In accordance with 29 CFR 1952.213(h), Maryland promulgated acceptable variance procedures and emergency temporary standard-setting procedures.

(k) In accordance with 29 CFR 1952.213(j), review of the job qualifications of State personnel was conducted by the State.

(l) In accordance with 29 CFR 1952.213(m), the State of Maryland has developed and implemented a safety and health program for public employees.

[44 F.R. 28327, May 15, 1979.]

(m) In accordance with 29 CFR 1952.213(a), the State submitted an occupational health study, and the State's occupational health plan is being implemented.

(n) In accordance with 29 CFR 1952.213(g), the State established a staff of hearing examiners and review procedures.

(o) In accordance with 29 CFR 1952.213(k), agricultural standards are being enforced by the Maryland Department of Labor and Industry.

[44 F.R. 28326, May 15, 1979.]

SUBPART P—TENNESSEE

1952.220—DESCRIPTION OF THE PLAN

(a) The plan identifies the Department of Labor and the Department of Health as the agencies designated to administer the plan throughout the State. It adopts the definition of occupational safety and health issues expressed in § 1902.2(c)(1) of this chapter. All standards, except those found in 29 CFR Parts 1915, 1916, 1917, and 1918 (ship repairing, ship building, ship breaking and longshoring) will be adopted and enforced immediately upon approval of the plan by the Assistant Secretary.

(b)

(1) The plan includes legislation passed by the Tennessee Legislature during its 1972 session which became effective July 1, 1972. Under the law, the Department of Labor and the Department of Public Health will have full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State with the exception of employees of the United States or employees protected under other Federal occupational safety and health laws such as the Atomic Energy Act of 1959 (42 U.S.C. 2011 *et seq.*). The Federal Coal Mine Safety Act of 1969 (30 U.S.C. 801), the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721 *et seq.*), railroad employees covered by the Federal Safety Appliances Act (45 U.S.C. 1 *et seq.*), and the Federal Railroad Safety Act (45 U.S.C. 421 *et seq.*), the Longshoremen's and Harbor Workers' Compensation Act, as amended (33 U.S.C. 901 *et seq.*), domestic workers, and any employee engaged in agriculture who is employed on a family farm. The Act further provides for the protection of employees from hazards, procedures for the development and promulgation of standards, including standards for protection of employees against new and unforeseen hazards; procedures for prompt restraint or elimination of imminent danger situations.

(2) The Act also insures inspections in response to complaints; employer and employee representatives an opportunity to accompany inspectors in order to aid inspections; notification of employees or their representative when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protections and obligations; adequate safeguards to protect trade secrets; provisions for prompt notice to employers and employees of alleged violations of standards and abatement requirements; a system of sanctions against employers for violations of standards; em-

ployer right of review with employee participation in review proceedings, and coverage of employees of political subdivisions. Legislation which became effective on April 5, 1973, providing for "stop orders" for cases of imminent danger situations is also included.

(c)

(1) The plan further includes proposed amendments submitted by the State which will be presented to the 1974 session of the State legislature to bring its Occupational Safety and Health Act into conformity with the requirements of 29 CFR Part 1902. These amendments pertain to such areas as permanent variances, employee protection against discharge or discrimination in terms and conditions of employment, imminent danger situations, sanctions, and walkaround. A statement of the Governor's support for the proposed amendments and a statement of legal opinion that they will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the Constitution and laws of the State are included in the plan.

(2) The plan provides a comprehensive description of personnel employed under the State's merit system and assurances of sufficient resources. The plan further sets out goals and provides a timetable to bring it into full conformity with the requirements of Part 1902 of this chapter.

(d) The Tennessee plan includes the following documents as of the date of approval:

(1) The plan description documents including the Tennessee Occupational Safety and Health Act, the proposed amendments to the Act and appendices in three (3) volumes;

(2) Letter from Ben O. Gibbs, Commissioner of Labor to Henry J. Baker, Project Officer, Office of State and Federal Operations, February 14, 1973, submitting additions and deletions to the plan.

(3) Letter from Edward C. Nichols, Jr., Staff Attorney for the Deparment of Labor, to Henry Baker, May 30, 1973, submitting a "red tag" provision which was signed into law by the Governor of Tennessee on April 5, 1973.

(4) Letter from Ben O. Gibbs, Commissioner of Labor and Eugene W. Fowinkle, Commissioner of Public Health, to Thomas C. Brown, Director, Office of Federal and State Operations, June 15, 1973, submitting proposed amendments and clarifications to the plan.

(e) The public comments will also be available for inspection and copying with the plan documents.

1952.221—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210; Regional Office, OSHA, Room 587, 1875 Peachtree Street, NE., Atlanta, Georgia 30309; Commissioner of Labor Office, Roon C-1-100, Cordell Hull Building, 5th Avenue North, Nashville, Tennessee 37219.

[39 F R. 4661, February 6, 1974]

1952.222—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with Tennessee, effective November 11, 1974, and as amended April 14, 1976, and based on a determination that Tennessee is operational in issues covered by the Tennessee occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under Part 1910 and Part 1926 of this chapter. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: Complaints filed with the U.S. Department of Labor about violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660(c)); Federal standards promulgated subsequent to the agreement where necessary to protect employees, as in the case of temporary emergency standards promulgated under section 6(c) of the Act (29 U.S.C. 655(c)), in the issues covered under the plan and the agreement until such time as Tennessee shall have adopted equivalent standards in accordance with Subpart C of Part 1953 of this chapter. Standards in §§ 1910.13 through 1910.16 of this chapter which issues have been specifically excluded from coverage under the Tennessee plan; working conditions in railroads, except working conditions as to which other Federal agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health; and investigations and inspections for the purpose of the evaluation of the Tennessee plan under section 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for resumption of exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Tennessee.

[41 F.R. 34152, August 13, 1976.]

1952.223—DEVELOPMENTAL SCHEDULE

The Tennessee state plan is developmental. The following is the developmental schedule as provided by the plan:

(a) Formal adoption of Federal standards immediately upon approval of State plan. (Existing State standards were repealed by the enabling legislation.) Enforcement of standards commences immediately upon promulgation.

(b) Amendments to legislation to be submitted to 1974 State legislative session.

(c) Regulations for recordkeeping and reporting will be promulgated upon plan approval.

(d) Regulations for inspections, citations, and proposed penalties will be promulgated immediately upon plan approval.

(e) Variances regulations will be promulgated within 60 days of plan approval.

(f) Manual Management data system operational July 1, 1973. Automated Management data system operational January 1, 1974.

[38 F.R. 17838, July 5, 1973.]

1952.224 COMPLETION OF DEVELOPMENTAL STEPS AND CERTIFICATION

(a) In accordance with § 1952.223(b), the Tennessee Occupational Safety and Health Act of 1972 was amended by Chapter 585, Public Acts of 1974, on March 20, 1974, with an effective date of July 1, 1974 and approved by the Secretary of Labor in August 15, 1975 (40 FR 36556). Further State-initiated amendments to the Act transferring all occupational safety and health responsibility to the Commissioner of Labor were promulgated effective July 1, 1977, and approved by the Assistant Secretary on May 3, 1978.

(b) In accordance with § 1952.223(d), regulations governing inspections, citations, and proposed penalties were originally promulgated by the Commissioner of Labor on July 2, 1973 (effective July 13, 1973) and approved by the Assistant Secretary on August 15, 1975 (40 FR 36556). These regulations were subsequently codified as Tennessee Department of Labor Chapter 0800-1-4 and reapproved by the Assistant Secretary, as amended, on May 3, 1978. The Tennessee Commissioner of Public Health promulgated parallel regulations on April 3, 1974 (effective May 3, 1974) which were also approved on August 15, 1975. These Department of Public Health regulations became inoperative on July 1, 1977.

(c) In accordance with § 1952.223(e), regulations governing temporary variances were promulgated by the Commissioner of Labor on July 2, 1973 (effective July 13, 1973) and approved by the Assistant Secretary on August 15, 1975, (40 FR 36566). These regulations, which were subsequently codified as Tennessee Department of Labor Chapter 0800-1-2, were expanded to include permanent variances, and amended in response to Federal comment, and reapproved by the Assistant Secretary on May 3, 1978. The Commissioner of Public Health promulgated regulations dealing with temporary variances on April 3, 1974, (effective May 3, 1974) which were also approved by the Secretary on August 15, 1975. These Department of Public Health regulations became inoperative on July 1, 1977.

(d) In accordance with the requirements of 29 CFR 1952.10, the Tennessee occupational safety and health poster for private employers and local government employers choosing to be treated as private employers was approved by the Assistant Secretary on August 15, 1975. In addition, a Tennessee occupational safety and health poster for public employees was approved by the Assistant Secretary on May 3, 1978.

[43 F.R. 20986, May 16, 1978.]

(e) In accordance with § 1952.223 (a) the Tennessee occupational safety and health standards identical to Federal standards (through December26, 1974) have been promulgated and approved, as revised, by the Assistant Regional Director on March 31, 1975 (40 FR 14383).

[40 F.R. 36566, August 21, 1975.]

(f) In accordance with § 1952.223(f) Tennessee implemented a manual management information system in July 1973, and converted to an automated system in July 1975.

[42 F.R. 58747, November 11, 1977.]

(g) In accordance with plan commitments, regulations governing Occupational Safety and Health Recordkeeping and Reporting (Chapter 0800-1-3) were promulgated by the Tennessee Department of Labor on June 10, 1974, and subsequently amended on April 15, 1976, July 14, 1977, August 15, 1977 and February 13, 1978. These regulations, which contain requirements essentially identical to the Federal 29 CFR Part 1904, were approved by the Assistant Secretary on May 3, 1978.

(h) In accordance with plan commitments, the Tennessee Occupational Safety and Health Review Commission promulgated regulations governing its operation on May 5, 1974 (Chapters 1030-1 through 1030-7). These regulations were subsequently amended in response to Federal comment on February 13, 1978, and approved by the Assistant Secretary on May 3, 1978.

[43 F.R. 20985, May 16, 1978.]

(i) In accordance with plan commitments, Tennessee revised its original Compliance Operations

Manual on May 19, 1975. The manual which was subsequently amended in response to Federal comment and to reflect all Federal procedures in effect as of December 1, 1976, was approved by the Assistant Secretary on May 3, 1978.

[43 F.R. 20983, May 16, 1978.]

(j) In accordance with State plan commitments, a Tennessee Public Employee plan and implementing regulations (Tennessee Department of Labor Chapter 0800-1-5) have been adopted and were approved by the Assistant Secretary on May 3, 1978.

[43 F.R. 20986, May 16, 1978.]

(k) In accordance with § 1902.34 of this chapter, the Tennessee occupational safety and health plan received certification, effective May 3, 1978, as having completed all developmental steps specified in its plan as approved on June 28, 1973, on or before July 1, 1976.

[43 F.R. 20982, May 16, 1978.]

SUBPART Q—KENTUCKY

1952.230—DESCRIPTION OF THE PLAN

(a) The plan designates the Department of Labor as the agency responsible for administering the Plan throughout the Sate. It proposes to define the occupational safety and health issue covered by it as defined by the Secretary of Labor in § 1902.2(c)(1) of this chapter. All occupational safety and health standards promulgated by the United States Secretary of Labor have been adopted under the Plan as well as a certain standard deemed to be "as effective as" the Federal standard, except those found in Parts 1915, 1916, 1917 and 1918 of this chapter (ship repairing, ship building, ship breaking and longshoring). All Federal standards adopted by the State became effective on December 29, 1972.

(b) Within the plan there is enabling legislation revising Chapter 338 of the Kentucky Revised Statutes which became law on March 27, 1972; as well as legislation enacted and approved in a Special Session of the Legislature in 1972 amending the enabling legislation. The law as enacted and modified gives the Department of Labor, Division of Occupational Safety and Health, the statutory authority to implement an occupational safety and health plan modeled after the Federal Act. There are provisions within it granting the Commissioner of Labor the authority to inspect workplaces and to issue citations for the abatement of violations and there is also included a prohibition against advance notice of such inspections. The law is also intended to insure employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations; notification of employees or their representatives when no compliance action is taken as a result of employee alleged violations; protection of employees against discrimination in terms and conditions of employment; and adequate safeguards to protect trade secrets. There is provision made for the prompt restraint of imminent danger situations and a system of penalties for violation of the statute. There are also provisions creating the Kentucky Occupational Safety and Health Standards Board and the Kentucky Occupational Safety and Health Review Board. The law has further provision that the Department of Labor will enter into an agreement with the Public Service Commission (PSC) which shall serve as the State agency in the administration of all matters relating to employees of public utilities.

(c) The plan includes an opinion from the Attorney General that the law is consistent with the Constitution of the State. There is also set forth in the Plan a Time Schedule for the Development of a Public Employee Program. The Plan also contains a comprehensive description of personnel employed under the State's merit system as well as its proposed budget and resources.

(d) The Kentucky plan includes the following documents as of the date of approval:

(1) The plan description documents, including

the Kentucky Occupational Safety and Health Act, and appendices in three (3) volumes;

(2) Letter for James R. Yocum, Commissioner of the Kentucky Department of Labor, to Basil A. Needham, Jr., Regional Administrator, Atlanta, Georgia Office, Occupational Safety and Health Administration, June 14, 1973, submitting additions and clarifications to the plan.

(3) Letter from James R. Yocum to the Assistant Secretary of Labor, John H. Stender, July 13, 1973, submitting assurances that the State will submit certain amendments to the 1974 session of its Legislature.

(e) The public comments will also be available for inspection and copying with the plan documents.

1952.231—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210; Assistant Regional Administrator, Occupational Safety and Health Administration, Department of Labor, 1375 Peachtree Street, NW., Suite 587, Atlanta, Georgia 30309; and the Kentucky Department of Labor, Capital Plaza Tower, Frankfort, Kentucky 40601.

[39 F.R. 4661, February 6, 1974.]

1952.232—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter under which an agreement has been entered into with Kentucky, effective November 18, 1974, and based on a determination that Kentucky is operational in issues covered by the Kentucky occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910 and 29 CFR Part 1926. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: Complaints filed with the U.S. Department of Labor about violations of the discrimination provisions of section 11(c) of

the Act (29 U.S.C. 660(c)); Federal standards promulgated subsequent to the agreement where necessary to protect employees as in the case of temporary emergency standards promulgated under section 6(c) of the Act (29 U.S.C. 665(c)), in the issues covered under the plan and the agreement until such time as Kentucky shall have adopted equivalent standards in accordance with Subpart C of 29 CFR Part 1953; Standards in 29 CFR 1910.13 through 1910.16, which issues have been specifically excluded from coverage under the Kentucky plan; and Investigations and inspections for the purpose of the evaluation of the Kentucky plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Assistant Regional Director for Occupational Safety and Health will make a prompt recommendation for resumption of exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Kentucky.

[39 F.R. 1512, January 8, 1975.]

1952.233—DEVELOPMENTAL SCHEDULE

The Kentucky state plan is developmental. The following is the developmental schedule as provided by the plan:

(a) A comprehensive public employee program will be developed within three years of plan approval.

(b) Within six months after plan approval, the procedure for the promulgation of standards will be revised.

(c) An affirmative action program will be submitted to the Assistant Secretary as well as clearance of possible inconsistencies of the State Merit System by the Civil Service Commission within six months after grant approval.

(d) Revision of various regulations, including those pertaining to employee access to information on their exposure to toxic materials or harmful physical agents and contests before the Review Commission will be undertaken within six months after plan approval.

(e) Submission of amendments to KRS Chapter 338 in 1974 General Assembly, to provide temporary variance authority and incorporate in that Chapter penalties for willful violations causing death.

[38 F.R. 20322, July 31, 1973.]

1952.234—COMPLETED DEVELOPMENTAL STEP

(a) In accordance with the requirements of § 1952.10 the Kentucky Safety and Health Poster for private and public employees was approved by the Assistant Secretary on May 20, 1976.

(b) Amendments in the Kentucky enabling legislation were enacted to include (1) a division of occupational safety and health compliance and a division of education and training (KRS 333.153(a)) and (2) authority and procedures for granting temporary variances. Penalties for willful violations causing death of an employee are covered under KRS chapters 434, 503 and 534.

(c) An amended Kentucky Administrative Procedure Act (KRS-Chapter 13) provides procedures for promulgation of standards and administrative regulations including emergency temporary standards.

(d) Kentucky regulations governing recordkeeping and reporting (parallel to the Federal 29/CFR Part 1904), inspections, citations, proposed penalties (parallel to the Federal 29 CFR Part 1903) and variances (parallel to the Federal 29 CFR Part 1905) were initially approved with the state plan on July 31, 1973. These regulations were expanded to provide for (1) penalties for failure to correct violations; (2) mandatory penalties for failure to post a citation; (3) procedures for petition for modification of abatement dates and (4) procedures for granting temporary variances. In addition, Kentucky adopted regulations pertaining to employee access to information on exposure to toxic materials or harmful physical agents.

(e) A manual Management Information System was implemented in July, 1975, and converted to an automated system in July, 1977.

(f) The personnel operations of the Kentucky Department of Labor and the servicing merit system agency have been found to be in substantial conformity with the "Standards for a Merit System of Personnel Administration" by letter of the Secretary of Labor dated May 17, 1977. In addition, a Kentucky Department of Labor affirmative action plan to promote equal employment opportunity has been judged acceptable by the Regional Office of Personnel Management by letter dated February 12, 1979.

(g) Kentucky revised regulations governing the operation of the Kentucky Occupational Safety and Health Review Commission were promulgated in December, 1975.

(h) A revised Kentucky Compliance Manual was initially submitted in July, 1976, and subsequently amended in response to Federal comment to reflect changes in Federal procedures through December 20, 1976.

(i) By executive orders 74-374 and 77-573 dated May 15, 1974, and June 30, 1977, respectively, the Governor of Kentucky made the following changes in the organization of the Kentucky Occupational Safety and Health Program:

(1) All occupational health functions except laboratory services were transferred from Kentucky Department of Human Resources to the Kentucky Department of Labor.

(2) Responsibilities for coverage of employees of public utilities were transferred from the Kentucky Public Service Commission to the Kentucky Department of Labor.

(j) A Kentucky Public Employee plan has been adopted by the State.

(k) In accordance with § 1902.34 of this chapter, the Kentucky occupational safety and health plan received certification, effective February 8, 1980, as having completed all developmental steps specified in its plan as approved on July 31, 1973, on or before July 31, 1976. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[45 F.R. 8595, February 8, 1980.]

SUBPART R—ALASKA

1952.240—DESCRIPTION OF THE PLAN

(a) The Department of Labor is the State agency designated by the Governor to administer the plan throughout the State. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in § 1902.2 (c)(1) of this chapter under four major codes for general safety industrial housing, electrical hazards, and occupational health and environmental controls. The plan also includes vertical special industry codes for construction, wood products, petroleum, and fishing. Appendix G of the plan contains a timetable for adoption of the standards beginning with the effective date of the grant approved under section 23(g) of the Act. The timetable requires from 6 to 36 months for completion of the standard-setting process with most of the standards to be adopted within 6 months of the effective date of the grant.

(b)

(1) The plan included draft legislation which has been passed by the State legislature and signed by the Governor amending Chapter 18 of the Alaska Statutes. Under the legislation, effective July 24, 1973, the Department of Labor has full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State, including coverage of public employees, with the exceptions of maritime workers in the area of exclusive Federal jurisdiction; employees of the United States; employees protected by State agencies under the Atomic Energy Act of 1954, (42 U.S.C. 2021); and employees whose working conditions are regulated by Federal agencies other than the U.S. Department of Labor under the provisions of section 4(b)(1) of the Occupational Safety and health Act of 1970 (84 Stat. 1592, 29 U.S.C. 653(b)(1)).

(2) The legislation brings the plan into conformity with the requirements of Part 1902 of this chapter in areas such as procedures for granting or denying permanent and temporary variances to standards by the Commissioner; protection of employees from hazards; promulgation of standards by the Commissioner prescribing requirements "at least as effective" as the requirements for Federal standards including medical examinations and monitoring and measuring of hazards; imminent danger abatement by administrative order and court injunction; protection of employees against discharge or discrimination in terms or conditions of employment by filling complaints with the Commissioner who will seek court action through the State Attorney General; and adequate safeguards to protect trade secrets.

(3) The legislation provides for inspections, including inspections in response to complaints; gives employers and employee representatives an opportunity to accompany inspectors in order to aid inspections and provides for payment to employees for time spent in aiding an inspection; notification of employees or their representatives when no compliance action is taken as a result of an alleged violation, including informal review; notification of employees of their protections and obligations through legislative requirements on posting; provision for prompt notice to employers and employees of alleged violations of standards, and abatement requirements, through the issuance and posting of citations; a system of sanctions against employers for violations of standards; employer right of review to the Occupational Safety and Health Review Board; and employee participation in the review procedure with compensation for time spent by the employee.

(c) Included in the plan is a statement of legal opinion that the law, which was supported by the Governor in accordance with the requirements of Part 1902 of this chapter, is consistent with the Constitution and laws of Alaska.

The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 of this chapter at the end of three years after commencement of operations under the plan. Personnel will be employed under the existing State merit system and the voluntary compliance program for on-site consultation meets the conditions set forth in the Washington decision (38 F.R. 2421). The plan also includes the State Administrative Procedure Act which authorizes the Commissioner to promulgate emergency temporary standards and issue rules and regulations necessary for the implementation of the safety and health law.

(d) The plan includes the following documents as of the date of approval:

(1) The plan document and appendices A through V.

(2) Alaska legislation as enacted amending Chapter 18 of the Alaska Statutes.

(3) Letters from the Commissioner of Labor dated May 25, 1973, June 15, 1973, and July 10, 1973.

1952.241—WHERE THE PLAN MAY BE INSPECTED

A copy of the complete plan may be inspected and copied during normal business hours at the following locations: Department of Labor, 338 Denali, 710 McKay Building, Anchorage, Alaska 99501; Assistant Regional Director, Department of Labor, Room 1813, Smith Tower Building, 506 Second Avenue, Seattle, Washington 98104; United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210.

[39 F.R. 4661, February 6, 1974.]

1952.242—LEVEL OF FEDERAL ENFORCEMENT.

(a) Pursuant to §§ 1902.20(b) (1) (iii) and 1954.3 of this chapter under which an agreement has been entered into with Alaska as amended effective January 6, 1977, and based on a determination that Alaska is operational in the issues covered by the Alaska occupational safety and health plan, discretionary Federal enforcement authority under Section 18(c) of the Act (29 U.S.C. 667c)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Parts 1910, 1926 and 1928. The U.S. Department of Labor will continue to exercise authority, among other things with regard to: Federal standards promulgated subsequent to the agreement where necessary to protect employees as in the case of temporary emergency standards promulgated under section 6(c) of the Act (29 U.S.C. 655(c)) in the issues covered under the plan and agreement until such time as Alaska shall have adopted equivalent standards in accordance with Subpart C of 29 CFR Part 1953; complaints about violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660); Federal standards contained in the issues covered by Subpart B—Ship repairing, Shipbuilding, Shipbreaking, and Longshoring, 29 CFR 1910.13 through 1910.16; and investigation and inspection for the purpose of evaluation of the Alaska plan under sections 18 (e) and (f) of the Act (29 U.S.C. 667 (e) and (f)).

(b) The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for resumption of exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in the State of Alaska.

[42 F.R. 37548, July 22, 1977.]

best copy available

1952.243—DEVELOPMENTAL SCHEDULE

The Alaska plan is developmental. The Schedule of developmental steps (described in the plan as revised in letters dated September 17, 1975, February 10, 1976, and April 15, 1976, from Edmond N. Orbeck, Commissioner, Alaska Department of Labor, to James Lake, Regional Administrator for Occupational Safety and Health) follows:

(a) Promulgation of occupational safety and health standards, as effective as corresponding Federal standards promulgated under Chapter XVII of Title 29, Code of Federal Regulations by September 1976.

(b) A compliance Operations Manual for the guidance of compliance personnel will be developed and printed by February 1, 1974.

(c) A Management Information System (MIS) will be developed by October 1, 1974.

(d) An interim training schedule (Appendix M) will be initiated by April 1, 1974. An extended training plan of substantially permanent form will be developed and adopted by October 1, 1976.

(e) Complete hiring of industrial health staff by October 1, 1976.

(f) Provide for an Industrial Health Laboratory capacity by October 1, 1976.

(g) Adoption of the following regulations by January 30, 1975:

(1) Recordkeeping & Reporting;

(2) Variances;

(3) Exceptions to the prohibitions against advance notice (such exceptions to be no broader than those contained in 29 CFR Part 1903);

(4) Clarification of the appropriate parties for employers to notify in order to file a notice of contest;

(5) A definition of imminent danger that mirrors the Federal definition;

(6) A regulation to allow affected employees to participate as parties in hearings.

1952.244—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with § 1952.243 (d) Alaska completed its interim training program by April 1, 1974, and has developed and adopted an extended training program by October 1, 1976 (41 FR 36206).

(b) In accordance with § 1952.243 (c) Alaska has developed and implemented a manual Management Information System by October 1, 1974 (41 FR 36206).

(c) In accordance with the requirements of § 1952.10 the Alaska Safety and Health Poster for private and public employees was approved by the Assistant Secretary on September 28, 1976 (41 FR 43405).

(d) In accordance with § 1952.243 (e) Alaska has completed hiring of its industrial health staff by October 1, 1976 (41 FR 52556).

(e) In accordance with § 1952.243 (f) Alaska has provided for an Industrial Health Laboratory capacity by October 1, 1976 (41 FR 36206).

[41 F.R. 56314, December 28, 1976.]

(f) In accordance wtih § 1952.243(g) Alaska has adopted regulations covering inspections, citations, and proposed penalties, Alaska Occupational Safety and Health Review Board procedures; recording and reporting occupational injuries and illnesses; variances; and consulting and training which were approved by the Assistant Secretary on August 2, 1977.

(g) In accordance with § 1952.243(b) Alaska has developed a Compliance Manual which is modeled after the Federal Field Operations Manual and was approved by the Assistant Secretary on August 2, 1977.

[42 F.R. 40196, August 9, 1977.]

(h) In accordance with § 1902.34 of this chapter, the Alaska occupational safety and health plan was certified, effective September 9, 1977, as having completed on or before October 1, 1976, all developmental steps specified in the plan as approved on July 31, 1973.

[42 F.R. 45907, September 13, 1977.]

SUBPART S—THE VIRGIN ISLANDS

1952.250—DESCRIPTION OF THE PLAN

(a) The Virgin Islands Occupational Safety and Health program will be administered and enforced by the Virgin Islands Department of Labor (hereafter called the agency). It will cover all activities of employees and places of private and public employment except those subject to Subpart G of Part 1910 and Subpart D of Part 1926 of this chapter relating to occupational health and environmental control and §§ 1910.13–1910.16 and Parts 1915–1918 of this chapter relating to maritime employment.

(b)

(1) The Plan requires employers of one or more employees to furnish them employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated or issued by the agency. The standards adopted by the United States Department of Labor covering issues within the scope of the plan will be adopted by the agency. The Plan also directs employees to comply with all occupational safety and health standards and regulations that are applicable to their own actions and conduct.

(2) The Plan also requires each owner, lessor, agent or manager of any premises used in whole or in part as a place of employment to comply with safety and health standards and regulations established under the program.

(c) The plan includes procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; and procedures for variances and the protection of employees from hazards. It provides employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations, before, during, and after inspections, protection of employees against discharge or discrimination in terms and conditions of employment, notice to employees or their representatives when no compliance action is taken upon complaints, including informal review, notice to employees of their protections and obligations, adequate safeguards to protect trade secrets, prompt notice to employers and employees of alleged violations of standards and abatement requirements, effective remedies against employers and owners, and the right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings; procedures for prompt restraint or elimination of imminent danger conditions, and procedures for inspection in response to complaints.

(d)

(1) The Plan includes a legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the laws of the Virgin Islands.

(2) A merit system of personnel administration will be used.

(3) A program of education, training, and consultation for employers and employees will be developed.

(4) The Plan is supplemented by the inclusion of implementing legislation (Virgin Islands Act No. 3421) and bill number 6003 to correct section 14(e) thereof and a revised implementation time table.

1952.251—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210; Regional Office, Occupational Safety and Health Administration, Room 3445, 1515 Broadway, New York, New York 10036; Department of Labor, Government of the Virgin Islands, Dronigan's Gade, Charlotte Amalie, St. Thomas, Virgin Islands 00801; and Department of Labor, Government of the Virgin Islands, Hospital Street, Christiansted, St. Croix, Virgin Islands 00820.

[39 F.R. 4661, February 6, 1974.]

1952.252—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with the Virgin Islands, effective September 9, 1981, and based on a determination that Virgin Islands is operational in the issues covered by the Virgin Islands occupational safety and health plan, discretionary Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910, 29 CFR Part 1928, and 29 CFR Part 1926 except in those issues relating to occupational health hazards and environmental control (Subparts G and U of 29 CFR Part 1910 and Subpart D of 29 CFR Part 1926, et al.). The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: Complaints filed with the U.S. Department of Labor alleging discrimination under Section 11(c) of the Act (29 U.S.C. 660(c)); standards in the maritime and longshoring issues covered by 29 CFR Parts 1915, 1916, 1917, 1918 and 1919 (ship building, shipbreaking, ship repairing, longshoring and gear certification), and health which issues have been specifically excluded from coverage under the plan; enforcement relating to any contractors or subcontractors on any Federal establishment where the State cannot obtain entry; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; situations when the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of the agreement; and investigations and inspections for the purpose of the evaluation of the Virgin Islands plan under Sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcmeent authority under Section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in the Virgin Islands.

[47 F.R. 25327, June 11, 1982]

1952.253—DEVELOPMENTAL SCHEDULE

The following is a summary of the major developmental steps provided by the plan:

(a)	Commencement of recruitment and staff training	September 10, 1973.
(b)	Effective date of implementing legislation	October 1, 1973.
(c)	Procedural and interpretative, regulations and standards to become effective	January 1, 1974.
(d)	Enforcement program to be operational	January 1, 1974.
(e)	Public employee program to be operational	July 15, 1974.
(f)	Program to be fully implemented	July 1, 1975

[38 F.R. 24896, September 11, 1973]

1952.254—COMPLETION OF DEVELOPMENTAL STEPS AND CERTIFICATION

(a) In accordance with § 1952.253(b), amendments to the Virgin Island legislation were passed March 11, and February 26, 1974.

(b) In accordance with § 1952.253(c), the Virgin Islands occupational safety and health standards were promulgated on March 21, 1974.

[40 F.R. 11352, March 11, 1975.]

(c) In accordance with § 1952.253(a) the Virgin Islands has completed the training as described therein.

(d) The Virgin Islands has developed and implemented a manual Management Information System.

(e) In accordance with the requirements of § 1952.10 the Virgin Islands safety and health posters for private and public employees were approved by the Assistant Secretary on September 28, 1976.

[41 F.R. 43406, October 1, 1976.]

(f) The Virgin Islands has developed and implemented an effective Public Information Program.

(g) The Virgin Islands amended its legislation to (i) delete reference to "political subdivisions" and substitute the term "department," and (ii) to add new sections (1) "Variations, Tolerances and Exemptions," and (2) "Disclosure of Confidential Trade Secrets."

(h) The Virgin Islands' Field Operations Manual (FOM) modeled after the Federal FOM has been developed by the State, and approved by the Assistant Secretary.

[42 F.R. 40195, August 9, 1977.]

(i) The Virgin Islands has developed

(1) an acceptable organizational chart;

(2) job descriptions for V.I. occupational safety and health employees which meet the necessary requirements;

(3) a procedure to correct a problem of understaffing in the V.I. in terms of plan commitment;

(4) a procedure for rating and ranking candidates; and

(5) an Affirmative Action Plan for Equal Employment Opportunity acceptable to CSC.

[44 F.R. 76783, December 28, 1979]

(j) In accordance with § 1952.253(e), the Virgin Islands implemented the public employee program in July 1975.

(k) In accordance with § 1952.253(c), the Virgin Islands adopted the Administrative Regulations on March 11, 1974.

[45 F.R. 56054, August 22, 1980.]

(l) In accordance with § 1952.253(d), the safety enforcement program in the Virgin Islands was operational in April 1974.

The supplement was approved by the Assistant Secretary on August 3, 1981.

[46 F.R. 41046, August 14, 1981]

(m) In accordance with § 1902.34 of this chapter, the Virgin Islands' occupational safety and health plan was certified effective September 22, 1981 as having completed all developmental steps specified in the plan as approved on September 11, 1973, on or before August 31, 1976.

This certification attests to structural completion, but does not render judgment on adequacy of performance.

[46 F.R. 46808, September 22, 1981]

1952.255 CHANGES TO APPROVED PLANS.

(a) In accordance with Part 1953, Subpart C of this Chapter, the following Virgin Islands plan changes were approved by the Assistant Secretary on December 20, 1979.

(1) The Virgin Islands amended its Regulation on Discrimination Against Employees Exercising Rights under 24 V.I.C. sec 40(c) to assure payment to employees for time engaged in walkaround activities in accordance with Federal regulations.

(2) The Virgin Islands amended Chapters VIII, X, XI, and XII through September 1977, changing the penalty calculation and assessment procedures to mirror OSHA procedures currently in use for both serious and other-than-serious violations.

[44 F.R. 76783, December 28, 1979.]

SUBPART T—MICHIGAN

1952.260—DESCRIPTION OF THE PLAN

(a) The plan identifies the Michigan Department of Labor and the Department of Public Health as the agencies to be responsible for administering the plan throughout the State. The Department of Labor will be responsible for promulgating and enforcing general safety and construction safety standards while the Department of Public Health will be responsible for the promulgation and enforcement of occupational health standards. Two independent commissions within the Department of Labor, the Construction Safety Commission and the Occupational Safety Standards Commission will promulgate general and construction safety standards while the Director of Public Health will promulgate health standards. Applications for variances to standards will be handled by the two Departments. Administrative adjudications will be the responsibility of the Occupational Safety Compliance and Appeals Board, the Construction Safety Compliance and Appeals Board, and the Occupational Health Review Commission.

(b) The State program is expected to extend its protection to all employees in the State (including those employed by it and its political subdivisions) except those employed by Federal agencies, maritime workers, household domestic workers, and mine workers.

(c) The Plan provides that the State agencies will have full authority to administer and to enforce all laws, rules and orders protecting employee safety and health in all places of employment in the State. It also proposes procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards, and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment, and procedures for variances and the protection of employees from hazards. It further provides employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations before, during and after inspections, protection of employees against discharge or discrimination in terms and conditions of employment, notice to employees or their representatives when no compliance action is taken upon complaints, including informal review, notice to employees of their protections and obligations, adequate safeguards to protect trade secrets, prompt notice to employers and employees of alleged violations of standards and abatement requirements, effective remedies against employers, and the right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceeding, procedures for prompt restraint or elimination of imminent danger conditions, provision for the issuance of cease operation orders in cases where employers fail to comply with final orders for abatement, and provision for inspections in response to complaints.

(d) The State intends to promulgate standards for all of the issues contained in 29 CFR Parts 1910 and 1926 with the exception of Ship Repairing (§ 1910.13), Shipbuilding (§ 1910.14), Shipbreaking (§ 1910.15) and Longshoring (§ 1910.16), which standards are to be as effective as Federal standards. Michigan had originally not intended to promulgate a standard covering cooperage machinery comparable to 29 CFR 1910.214, but it has now provided assurances that it will promulgate such standard if the hazards covered by the Federal cooperate standard are found to exist in Michigan. The State has already promulgated standards as effective as Subparts F, K, M, Q and S and the remaining Subparts are to be covered by State standards which are to be promulgated by June 1975.

(e) The Plan includes a statement of the Governor's support for the proposed legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the Constitution and laws of Michigan. The Plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 of this title upon enactment of the proposed legislation by the State legislature. A merit system of personnel administration will be used. In addition, health and safety education and training programs are be carried on for the benefit of employers and employees. The Department of Labor will also be conducting a Safety Director Program wherein companies which are found to have high injury incident rates will be assisted in developing safety programs.

1952.261—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210; Regional Office, Occupational Safety and Health Administration, 300 South Wacker Drive, Chicago, Illinois 60606; Michigan Department of Labor, Bureau of Safety and Regulation, 2nd Floor, 300 East Michigan Avenue, Lansing, Michigan 48926; Michigan Department of Public Health, Division of Occupational Health, Media Building, 2nd Floor, 3500 North Logan Street, Lansing, Michigan 48114.

[39 F.R. 4661, February 6, 1974.]

1952.262—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to §§1902.20(b) (1) (iii) and 1954.3 of this chapter under which an agreement has been entered into with Michigan, effective January 6, 1977, and based on a determination that Michigan is operational in the issues covered by the Michigan occupational safety and health plan, discretionary Federal enforcement activity under section 18(e) of the Act (29 U.S.C. 667(e) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910 and 29 CFR Part 1926. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor about violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660(c)); Federal standards promulgated subsequent to the agreement where necessary to protect employees, as in the case of temporary emergency standards promulgated under section 6(c) of the Act (29 U.S.C. 655(c)), in the issues covered under the plan and the agreement until such time as Michigan shall have adopted equivalent standards in accordance with Subpart C of 29 CFR Part 1953; standards contained in 29 CFR 1910.15 through 1910.19, which issues have been specifically excluded from coverage under the Michigan plan; and investigations and inspections for the purpose of the evaluation of the Michigan plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in the State of Michigan.

[42 F.R. 15411, March 22, 1977.]

1952.263—DEVELOPMENTAL SCHEDULE

(a) Enactment of the Michigan Occupational Safety and Health Act by December 1973.

(b) Promulgation of occupational safety and health standards as effective and comprehensive as those set forth in Chapter XVII of this Title 29 of the Code of Federal Regulations by June 1975.

(c) Completion of the Michigan Compliance Manual within one year after passage of the State legislation.

(d) Promulgation of regulations similar to Parts 1903, 1905 and 2200 of this Title within one year after passage of the State legislation.

(e) Promulgation of 29 CFR Part 1904 as a State regulation including any amendments to Part 1904, within one (1) year following passage of the proposed legislation.

(f) Development of a new coordination agreement between the Michigan Departments of Labor and Public Health within three months following the passage of the proposed State legislation.

(g) Implementation of the State's public employee program within one year following passage of the proposed legislation.

(h) Within three years of plan approval all developmental steps will be fully implemented.

[38 F.R. 27388, October 3, 1973.]

(i) In accordance with § 1902.34 of this chapter, the Michigan occupational safety and health plan was certified effective January 13, 1981 as having completed all developmental steps specified in the plan as approved on September 24, 1973, on or before September 24, 1976.

This certification attests to structural completion, but does not render judgment on adequacy of performance.

[46 F.R. 3865, January 16, 1981]

1952.264—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with §1952.263(a), the Michigan Occupational Safety and Health Act was enacted on June 18, 1974 and is effective January 1, 1975. This legislation, Act 154 of Michigan Public Acts of 1974, was submitted to the Assistant Secretary on June 19, 1974 and approved on February 21, 1975.

(b) In accordance with §1952.263 (f) the Michigan Department of Labor and the Michigan Department of Public Health have entered into a new interagency agreement on September 23, 1974. The agreement was submitted to the Assistant Secretary on October 28, 1974 and approved on February 21, 1975.

[40 F.R. 8555, February 28, 1975.]

(c) In accordance with the requirements of § 1952.10, the Michigan State poster was approved by the Assistant Secretary on September 22, 1975.

[40 F.R. 44131, September 25, 1975.]

(d) In accordance with § 1952.263(g) Michigan's public employee program was implemented with an effective date of July 1, 1975, and approved by the Assistant Secretary on October 17, 1977.

[42 F.R. 57123, November 1, 1977.]

(e) In accordance with § 1952.263(d), Procedural Rules for the granting of Variances, Regulations for Inspections and Investigations, Citations, and Proposed Penalties and Procedural Rules for the Board of Health and Safety Compliance and Appeals, were approved by the Assistant Secretary on January 12, 1981.

(f) In accordance with prior commitments, the Michigan Occupational Safety and Health Act as amended by Act 149 of the Public Acts of 1979, was approved by the Assistant Secretary on January 12, 1981.

(g) In accordance with § 1952.263(c), Manuals for Compliance Operations of the Michigan Department of Labor and Public Health were approved by the Assistant Secretary on January 13, 1981.

(h) In accordance with § 1952.263(e), Rules for Recording and Reporting of Occupational Injuries and Illnesses, were approved by the Assistant Secretary on January 13, 1981.

[46 F.R. 3863, January 16, 1981]

SUBPART U—VERMONT

1952.270—DESCRIPTION OF THE PLAN

(a) The State's program will be administered and enforced by the Department of Labor and Industry. Safety standards are to be promulgated by the Commissioner of Labor and Industry while the Secretary of the Agency of Human Services is to promulgate health standards. The Division of Industrial Hygiene, within the Department of Labor and Industry, will then have the responsibility of inspecting workplaces for violations of health standards. However, enforcement of the Vermont Occupational Safety and Health Act, including the issuance of citations for all violations, rests with the Department of Labor and Industry. Administrative adjudications will be the responsibility of an independent State Occupational Safety and Health Review Board.

(b) The State program will protect all employees within the State including those employed by the State and its political subdivisions. Public employees are to be granted the same protections as are afforded employees in the private sector. Specific administrative procedures for implementing the plan within the State agencies are to be drafted by the Vermont Agency of Administration.

(c) Vermont has adopted all Federal standards promulgated before December 31, 1972. Future permanent Federal standards will be adopted by the State within one year after promulgation by the Secretary of Labor.

(d) The State enabling legislation became law on July 1, 1972. The Act sets forth the general authority and scope for implementing the plan. The plan also contains proposed amendments to the Act which are designed to bring the legislation into full conformity with section 18(c) of the Federal Act and Part 1902. The State has also adopted regulations patterned after 29 CFR Parts 1903, 1904 and 1905.

(e) The Vermont Act and the regulations drafted pursuant to it provide procedures for prompt and effective standards-setting for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; variances; the giving to employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations before, during, and after inspections; the protection of employees against discharge or discrimination in terms or conditions of employments; notice to employees or their representatives when no compliance action is taken upon complaints, including informal review; notice to employees of their protections and obligations; adequate safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers; the right to review alleged violations, abatement periods, and proposed penalties with the opportunity for employee participation in the review proceedings; prompt restraint or elimination of imminent danger conditions; and the development of a program to encourage voluntary compliance by employers and employees.

(f) The plan includes a statement of the Governor's support of it and of the proposed amendments to its legislation. It sets out goals and provides a timetable for bringing the plan into full conformity with Part 1902. Personnel hired under the State's merit system will carry out the program.

1952.271—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210; Regional Office, Occupational Safety and Health Administration, 18 Oliver Street, Fifth Floor, Boston, Massachusetts 02110; Department of Labor and Industry, State Office Building, Montpelier, Vermont 05602.

[39 F.R. 4661, February 6, 1974.]

1952.272—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) of Title 29, Code of Federal Regulations, the present Federal enforcement authority in Vermont will not change initially. Present priorities of Federal enforcement will continue at least until the State has promulgated rules for the operation of the Occupational Safety and Health Review Board and until certain other administrative regulations are promulgated.

1952.273—DEVELOPMENTAL SCHEDULE

(a) Introduction and enactment of amendments to the Vermont Occupational Safety and Health Act in the 1974 session of the State legislature;

(b) Completion of the State's Compliance Manual;

(c) Drafting of rules governing the operation of the Occupational Safety and Health Review Board;

(d) Development of specific administrative procedures for implementing the occupational safety and health program within the State agencies by January 1974;

(e) Development of the State's Voluntary Compliance Program for Employers and Employees by January 1974.

(f) Appointment of advisory committees for safety and health standards upon plan approval.

(g) Within three years of plan approval all developmental steps will be fully implemented.

[38 F.R. 28658, October 16, 1973.]

1952.274—COMPLETION OF DEVELOPMENTAL STEPS AND CERTIFICATION

(a) In accordance with § 1952.273(a), amendments to the Vermont Occupational Safety and Health Act were passed by the legislature and signed by the Governor on April 3, 1974.

(b) In accordance with § 1952.273(c), rules governing the operation of the Occupational Safety and Health Review Board have been adopted, under section 230 of the Vermont Act, effective January, 1974.

[39 F.R. 44201, December 23, 1974.]

(c) In accordance with 29 CFR 1952.273(f), the Vermont Standards Advisory Council was established in January 1974.

(d) In accordance with 29 CFR 1952.273(g), the following developmental steps have been implemented.

(1) The health and safety enforcement program in the State of Vermont including enforcement of the State's occupational safety and health standards and regulations, was implemented on November 12, 1973.

(2) The Vermont Occupational Safety and Health Review Board has been in operation since October 1973, under rules and regulations formally promulgated on February 4, 1974, and approved on December 16, 1974 (39 FR 44201, December 23, 1974).

(3) Recordkeeping and reporting requirements, as approved on October 1, 1973, (38 FR 28658), were implemented for both the private and public sectors on November 12, 1973.

(4) Written procedures for coordination between Vermont's Division of Occupational Safety and Division of Occupational Health were formulated in June 1975, and revised in September 1975.

[42 F.R. 2313, January 11, 1977.]

(e) In accordance with the requirements of §1952.10 the Vermont Safety and Health Poster for private and public employees as amended by the attachment informing the public of its right to complain about State program administration, was approved by the Assistant Secretary on February 9th, 1977.

[42 F.R. 9168, February 15, 1977.]

(f) In accordance with 29 CFR 1952.273(b), the State has developed a Field Operations Manual which defines the procedures and guidelines to be used by the Vermont compliance staff in carrying out the goals of the program and other local government workplaces and which has been approved by the Assistant Secretary on February 22, 1977.

(g) In accordance with 29 CFR 1952.273(d), the State has developed and implemented a State

Agency Program by July 1, 1974 and a Public Agency (local and municipal) Enforcement Program by November 12, 1973, which has been approved by the Assistant Secretary on February 22, 1977.

(h) In accordance with 29 CFR 1952.273(e), the State of Vermont has developed and implemented its voluntary Compliance Program, including a training program for employers and employees, by February 1974, which has been approved by the Assistant Secretary as completion of developmental step on February 22, 1977.

[42 F.R. 10988, February 25, 1977.]

(i) In accordance with 29 CFR 1902.34, the Vermont occupational safety and health plan was certified, effective as of the date of publication on March 4, 1977, as having completed all developmental steps specified in the plan (as approved on October 1, 1973) on or before September 30, 1976.

[42 F.R. 12428, March 4, 1977.]

SUBPART V, REVOKED

[40 F.R. 24522, June 9, 1975.]

SUBPART W—NEVADA

1952.290—DESCRIPTION OF THE PLAN

(a) The Nevada Occupational Safety and Health program will be administered and enforced by the Department of Occupational Safety and Health of the State of Nevada. Administrative adjudications of proposed penalties will be the responsibility of an independent five member review board appointed by the Governor.

(b) The program will cover all activities of emloyees and places of private and public employment except those involving Federal employment, highway motor vehicles, and railroads, subject to the exercise of jurisdiction under other Federal safety and health programs. It requires employers of one or more employees (including those employed by the State and its political subdivisions) to furnish them employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated or issued by the agency. Moreover, all safety and health standards adopted by the United States Department of Labor shall be deemed Nevada Occupational Safety and Health standards. The plan also directs employees to comply with all occupational safety and health standards and regulations that are applicable to their own actions and conduct.

[39 F.R. 8613, March 6, 1974.]

(c) The Plan includes procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; and procedures for the issuance of variances. It provides employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations, before, during, and after inspections; protection of employees against discharge or discrimination in terms and conditions of employment; notice to employees or their representatives when no compliance action is taken upon complaints, including informal review; notice to employees of their protections and obligations; adequate safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective remedies against employers and the right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings; procedures for prompt restraint or elimination of imminent danger conditions, and procedures for inspection in response to complaints.

(d)

(1) The Plan includes a legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the Constitution and laws of the State of Nevada.

(2) A merit system of personnel administration will be used.

(3) The Plan provides a program of education, training, and consultation for employers and employees.

(4) The Plan is supplemented by the inclusion of implementing legislation and letters dated July 26, August 10, and November 5, 1973, and a telegram dated Dec. 5. 1973.

1952.291—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: United States Department of Labor, Office of Federal and State Operations. Occupational Safety and Health Administration, Room 800, 1726 M Street NW., Washington, D.C. 20210; Regional Office, Occupational Safety and Health Administration, Room 9470, Federal Office Building, 450 Golden Gate Avenue, San Francisco, California 94102; Department of Occupational Safety and Health, 515 East Musser Street, Carson City, Nevada 89701.

[39 F.R. 8613, March 6, 1974.]

1952.292—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with Nevada, effective December 9, 1981, and based on a determination that Nevada is operational in the issues covered by the Nevada occupational safety and health plan, discretionary Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910, 29 CFR Part 1928, and 29 CFR Part 1926. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under Section 11(c) of the Act (29 U.S.C. 660(c)); standards in the maritime and longshoring issues covered by 29 CFR Parts 1915, 1916, 1917, 1918, and 1919 (ship building, shipbreaking, ship repairing, longshoring and gear certification), which have been specifically excluded from coverage under the plan; enforcement relating to any contractors or subcontractors on any Federal establishment where the State cannot obtain entry; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; situations when the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of the agreement; and investigations and inspections for the purpose of the evaluation of the Nevada plan under Sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Nevada.

[47 F.R. 25326, June 11, 1982]

1952.293—DEVELOPMENTAL SCHEDULE

The following is a summary of the major developmental steps provided by the plan:

(a) Training of enforcement personnel to be completed—July 1, 1974.

(b) Application of the program to State and local employees to take effect—July 1, 1974.

(c) Not less than two industrial hygiene experts shall participate in the program—July 1, 1975.

(d) Proposed amendments to the Nevada Occupational Safety and Health Act to have been adopted and to take effect—July 1, 1975.

(e) System of recordkeeping and reporting fully developed and operational—January 1, 1977.

(f) Program to be fully implemented—January 1, 1977.

[39 F.R. 1008, January 4, 1974.]

1952.294—COMPLETED DEVELOPMENTAL STEPS

(a) A separate and autonomous on-site consultation program became effective on July 1, 1975, and was approved by the Assistant Secretary on February 26, 1976.

[41 F.R. 8955, March 2, 1976.]

(b) In accordance with § 1952.293(c), as amended, the Nevada health program was submitted on December 3, 1976 and has been implemented.

(c) In accordance with the requirements of §1952.10, the Nevada poster for private employers was approved by the Assistant Secretary on December 23, 1977.

(d) In accordance with § 1952.293(a), initial training of Nevada personnel has been completed.

(e) Nevada began participation in the Bureau of Labor Statistics annual survey of occupational injuries and illnesses on July 19, 1976.

(f) Standards identical to Federal standards promulgated through January 18, 1977 were adopted by the State and approved by the Regional Administrator in the notice published by the Federal Register on July 26, 1977 (42 FR 38026).

[42 F.R. 64626, December 27, 1977.]

SUBPART X—[RESERVED]

[43 F.R. 51390, November 3, 1978.]

Subpart Y—HAWAII

1952.310—DESCRIPTION OF THE PLAN

(a) The plan designates the Department of Labor and Industrial Relations as the agency responsible for administering the plan throughout the State. It proposes to define the occupational safety and health issues covered by it as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). All occupational safety and health standards promulgated by the U.S. Secretary of Labor will be adopted under the plan as well as certain standards deemed to be "as effective as" the Federal standards, except those found in 29 CFR Parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking and longshoring).

(b) Within the plan there is the Hawaii Occupational Safety and Health Law which became law on May 16, 1972. The law as enacted gives the Department of Labor and Industrial Relations the authority to inspect workplaces and to issue citations for the abatement of violations and there is also included a prohibition against advance notice of such inspections. The law is also intended to insure employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations; notification of employees or their representatives when no compliance action is taken as a result of alleged violations; protection of employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets. There is provision made for the prompt restraint of imminent danger situations and a system of penalties for violation of the law.

(c) The plan also includes proposed amendments to be considered by the Hawaii Legislature during its 1974 session amending the Occupational Safety and Health Law, and related provisions, to bring them into conformity with the requirements of Part 1902.

(d) The Hawaii plan includes the following documents as of the date of approval:

(1) The plan description documents, including the Hawaii Occupational Safety and Health Law, the proposed amendments to the Law and appendices in three (3) volumes;

(2) Letter from Robert K. Hasegawa, Director of the Department of Labor and Industrial Relations, to Jay Arnoldus, Project Officer, Office of Federal and State Operations, December 10, 1973, submitting clarifications to the plan.

(3) Letters from Robert C. Gilkey, Deputy Director of the Department of Labor and Industrial Relations, to Jay Arnoldus, December 3, 1973 and December 4, 1973 submitting clarifications and deletion to the plan.

(4) Letters from Robert K. Hasegawa to Gabriel Gillotti, Assistant Regional Director, January 30, 1973, and June 28, 1973.

(5) Letter from Robert A. Gilkey to John H. Stender, Assistant Secretary of Labor, October 30, 1973.

(6) Letters from Robert K. Hasegawa to John H. Stender, Assistant Secretary of Labor, November 7, 1973 and September 14, 1973 submitting proposed legislative amendments and modifications and clarifications to the plan.

1952.311—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of Federal and State Operations, Occupational Safety and Health Administration, 1726 M Street NW., Washington, D.C. 20210; Assistant Regional Director, Occupational Safety and Health Administration, Room 9470, Federal Office Building, 450 Golden Gate Avenue, San Francisco, CA 94102; and the offices of the Department of Labor and Industrial Relations, Room 308, 825 Miliani Street, Honolulu, HA 96313.

1952.312—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter under which an agreement has been entered into with Hawaii, effective May 19, 1976, and based on a determination that Hawaii is operational in the issues covered by the Hawaii occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910 and 29 CFR Part 1926. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to complaints filed with the U.S. Department of Labor about violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660(c)); Federal standards promulgated subsequent to the agreement where necessary to protect employees, as in the case of temporary emergency standards promulgated under section 6(c) of the Act (29 U.S.C. 655(c)), in the issues covered under the plan and the agreement until such time as accordance with Subpart C of 29 CFR Part 1953; agricultural standards of 29 CFR Part 1928 until such time as Hawaii shall have promulgated comparable agricultural standards; standards in the maritime issues covered by 29 CFR 1910.13 through 1910.16, which issues have been specifically excluded from coverage under the plan; investigations and inspections for the purpose of the evaluation of the Hawaii plan under sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f); and the completion of enforcement activities conducted prior to the effective date of the operational agreement. The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Hawaii.

[41 F.R. 34251, August 13, 1976.]

1952.313—DEVELOPMENTAL SCHEDULE

(a) Introduction of Legislative amendments to State Legislature, January 1974.

(b) Hearing on Standards promulgation, March 1974.

(c) Implementation of the Managment Information System by December 1975.

(d) Complete implementation of the occupational health program by July 1975.

(e) Complete State plan implementation, December 1976.

[40 F.R. 28792, July 9, 1975.]

1952.314 COMPLETION OF DEVELOPMENTAL STEPS AND CERTIFICATION

(a) In accordance with § 1952.313(i), specific Legislative amendments were enacted by the State Legislature and signed by the Acting Governor on June 7, 1974, and amended by Act 95 of the 1976 Hawaii Legislative Session.

[43 F.R. 5821, February 10, 1978.]

(b) In accordance with § 1952.313(d), as amended, the Hawaii Occupational Health Plan was submitted to the Assistant Secretary on April 16, 1974 and approved on December 20, 1974, incorporating assurances from the State, by letter dated November 19, 1974.

[39 F.R. 44752, December 27, 1974.]

REGULATIONS AND PROCEDURES

(c) In accordance with § 1952.313(b), as amended, the Hawaii occupational safety and health standards were promulgated on April 18, 22, 23, 24, and 25, 1975.

(d) In accordance with the requirements of 29 CFR 1952.10, the Hawaii State poster was approved by the Assistant Secretary on February 4, 1975.

[40 F.R. 6335, February 11, 1975.]

(e) In accordance with 29 CFR 1952.313(d), as amended, the Hawaii occupational health program was implemented on July 1, 1975.

[41 F.R. 26217, June 25, 1976.]

(f) The Rules of Procedure of the Hawaii Division of Occupational Safety and Health were promulgated in September, 1972, and revised in January, 1974. These rules include: Regulations on inspections, citations, and proposed penalties (chapter 102); regulations for recording and reporting occupational injuries and illnesses (chapter 103); rules or practice for variances (chapter 104); regulations concerning administration witnesses and documents in private litigation (chapter 105); and regulations for promulgating, modifying, or revoking occupational safety and health standards (chapter 106).

(g) In accordance with 29 CFR 1952.313(c), as amended, the Hawaii Management Information System was completed and in operation by December 31, 1975.

[43 F.R. 5821, February 10, 1978.]

(h) In accordance with § 1902.34 of this chapter, the Hawaii occupational safety and health plan was certified, effective April 26, 1978 as having completed all developmental steps specified in the plan as approved on December 28, 1973, on or before December 31, 1976.

[43 F.R. 19851, May 9, 1978.]

1952.315—CHANGES TO APPROVED PLANS

(a) In accordance with Subparts C and E of Part 1953 of this Chapter, the following plan change supplements, effective August 1979, were approved by the Assistant Secretary on November 13, 1980.

(1) Hawaii amended its regulations on recordkeeping and reporting of occupational injuries and illnesses to allow access to records by employees, former employees and their representatives, and also to change its recordkeeping forms.

(2) Hawaii amended its variance rules to clarify the fact that temporary variances will only be granted under specified conditions, where equivalent or superior protection is assured and where the variance is the safest feasible solution.

[45 F.R. 77001, November 21, 1980]

SUBPART Z—INDIANA

1952.320—DESCRIPTION OF THE PLAN

(a)

(1) The plan identifies the Indiana Division of Labor as the State agency designated to implement and carry out the State plan. Within this structure, the Occupational Safety Standards Commission has the responsibility to adopt standards and dispose of variance applications; the Commissioner of Labor is charged with administration and enforceoent of the Act; and the Board of Safety Review is to conduct and decide contested cases. The State Board of Health, Industrial Hygiene Division, pursuant to an agreement with the Division of Labor will provide laboratory services and will conduct occupational health inspections as scheduled by the Division of Labor.

(2) The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). Further, Indiana has adopted all Federal safety and health standards contained in 29 CFR Parts 1910 and 1926. The State program is to extend its protection to all employees in the State including those employed by it and its political subdivisions.

(b) The plan includes existing enabling lesislation and the Indiana Occupational Safety and Health Act (IC 1971, 22—8—1.1 *et seq.*) as well as amendments to this Act which were passed and became effective on May 1, 1973. Under the Act as amended the Division of Labor has authority to administer and enforce the provisions of the State plan.

(c) The legislation provides procedures for the promulgation of standards; furnishing information to employees on hazardous and toxic substances; and procedures for granting temporary and permanent variances. The law also contains procedures for inspections including inspections in response to complaints; ensures employer and employess representatives an opportunity to accompany inspectors and to call attention to possible violations before, during and after inspections; protection of employees against discharge or discrimination in terms or conditions of employment through court suits brought by the Attorney General at the request of the Commissioner; notice to employees of their protections and obligations under the State law; prompt restraint of imminent danger situations; safeguard to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers; and employer right to review of alleged violations, abatement periods, and proposed penalties with an opportunity for employee participation and employee right of review of such abatement periods.

(d) The plan also contains a voluntary compliance program. The State will conduct seminars, conferences and meetings designed for management, supervisory personnel, employees and union representatives to transmit information about its safety and health program. These programs are specifically designed to cover the following areas: general industrial safety, construction afety, first and instruction, supervisory safety training, hazard recognition, Indiana occupational health and safety laws, Federal occupational safety and health laws, State health and safety standards, injury and illness reporting procedures requirements, rights and obligations to employers and employees, enforcement programs. On-site consultation services will be available for employers upon request as part of the developmental plan.

(e) Also included in the plan are proposed budgets to be devoted to it as well as descriptions of the job classifications and personnel who will be carrying out the program. Further, the plan sets out goals and provides a timetable for bringing it into full conformity with 29 CFR Part 1902.

1952.321—WHERE THE PLAN MAY BE INSPECTED

A copy of the complete Indiana plan may be inspected and copied during normal business hours at the State of Indiana Division of Labor, Room 1913, State Office Building, Indianapolis, Indiana 46202; Assistant Regional Director, Occupational Safety and Health Administration, U.S. Department of Labor, 300 South Wacker Drive, Room 1201, Chicago, Illinois 60606; and the Office of Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room 800, 7126 M Street, N.W., Washington, D.C. 20210.

1952.322—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with Indiana effective October 22, 1981, and based on a determination that Indiana is operational in the issues covered by the Indiana occupational safety and health plan, discretionary Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 C.F.R. Part 1910, 29 CFR Part 1926, and 29 CFR Part 1928. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under Section 11 (c) of the Act (29 U.S.C. 660(c)); standards in the maritime and longshoring issues covered by 29 CFR Parts 1915, 1916, 1917, 1918, and 1919 (shipbuilding, shipbreaking, ship repairing, longshoring and gear certification), which have been specifically excluded from coverage under the plan; enforcement relating to any contractors or subcontractors on any Federal establishment where the State cannot obtain entry; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; situations when the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of the agreement; and investigations and inspections for the purpose of the evaluation of the Indiana plan under Sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Indiana.

[47 F.R. 25325, June 11, 1982]

1952.323—DEVELOPMENTAL SCHEDULE

(a) Proposed legislative amendments to be introduced in the 1974 session of the State legislature;

(b) Refresher course for inspectors will be completed by September 1, 1974;

(c) A full complement of 69 inspectors will be hired by the end of the first year of plan operation; the State will add 10 inspectors for each of the two succeeding years;

(d) Development of a State employee safety program within nine months following plan approval;

(e) Establishment of the rules of procedures for on-site consultations within nine months following plan approval;

(f) Within three years of plan approval all developmental steps will be fully implemented.

[39 F.R. 8611, March 6, 1974.]

1952.324—COMPLETION OF DEVELOPMENTAL STEPS AND CERTIFICATION

(a) In accordance with the requirements of § 1952.10, the Indiana poster was approved for use until Federal enforcement authority and standards become inapplicable to issues covered under the plan, by the Assistant Secretary on March 2, 1976.

[47 F.R. 28918, July 2, 1982]

(b) In accordance with 29 CFR 1952.323(a), Indiana amended the Indiana Occupational Safety and Health Act (I.C. 22-8-1.1) in 1975, 1977, and 1978. These amendments were approved by the Assistant Secretary on September 24, 1981.

(c) In accordance with 29 CFR 1952.323(b), Indiana submitted documentation outlining training and refresher courses for its compliance staff on May 19, 1975 and May 4, 1981. This supplement was approved by the Assistant Secretary on September 24, 1981.

(d) In accordance with 29 CFR 1952.323(c), Indiana submitted documentation on May 4, 1981, showing that it has substantially met its compliance staffing commitments by providing for 14 health and 70 safety compliance officers. This supplement was approved by the Assistant Secretary on September 24, 1981.

(e) In accordance with 29 CFR 1952.323(d), Indiana developed an occupational safety and health program for public employees on August 25, 1975, and resubmitted a revised program with implementing regulations on September 5, 1981. These were approved by the Assistant Secretary on September 24, 1981.

(f) In accordance with 29 CFR 1952.323(e), Indiana promulgated rules for on-site consultation on March 7, 1975, which were amended on September 5, 1981. These regulations were approved by the Assistant Secretary on September 24, 1981.

(g) Indiana submitted its compliance operations manual on August 7, 1975, which was subsequently revised in 1978 and again on June 4, 1980. The state submitted a revised Industrial Hygiene manual on July 15, 1981. These manuals, which reflect changes in the Federal program through 1980 were approved by the Assistant Secretary on September 24, 1981.

(h) Indiana promulgated regulations for inspections, safety orders, and proposed penalties parallel to 29 CFR Part 1903 on January 18, 1977 with amendments dated July 29, 1977 and September 5, 1981. These regulations were approved by the Assistant Secretary on September 24, 1981.

(i) Indiana promulgated regulations for recordkeeping and reporting of occupational injuries and illnesses parallel to 29 CFR Part 1904 on January 18, 1977, which were amended on September 10, 1979. The State also revised its recordkeeping and reporting provisions for the public sector on September 5, 1981. These regulations were approved by the Assistant Secretary on September 24, 1981.

(j) Indiana promulgated rules for variances, limitations, variations, tolerances, and exemptions, parallel to 29 CFR Part 1905 on December 17, 1976, which were revised June 3, 1977 and September 5, 1981. These regulations were approved by the Assistant Secretary on September 24, 1981.

(k) Indiana adopted rules procedure for the Board of Safety Review on September 19, 1976, which were subsequently amended on September 5, 1981. These regulations were approved by the Assistant Secretary on September 24, 1981.

(l) Indiana deleted coverage of the maritime and longshoring issues from its plan on June 9, 1981. This supplement was approved by the Assistant Secretary on September 24, 1981.

(m) Indiana submitted documentation on establishment of its Management Information System on May 20, 1974. This supplement was approved by the Assistant Secretary on September 24, 1981.

[46 F.R. 49119, October 6, 1981]

(n) In accordance with § 1902.34 of this chapter, the Indiana occupational safety and health plan was certified, effective October 16, 1981 as having completed all developmental steps specified in the plan as approved on February 25, 1974 on or before February 25, 1977. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[46 F.R. 49121, October 6, 1981.]

Subpart AA Revoked

[40 F.R. 33972, August 13, 1975.]

SUBPART BB—WYOMING

1952.340—DESCRIPTION OF THE PLAN

(a) The plan identifies the Wyoming Occupational Health and Safety Commission as the agency to be responsible for administering the plan throughout the State. The Commission will be responsible for promulgating and enforcing occupational safety and health standards and deciding contested cases, subject to judicial review.

(b) The State program will protect all employees within the State, including those employed by the State and its political subdivisions. Public employees are to be granted the same protections as are afforded employees in the private sector. The State plan does not cover employees of the Federal government or those employees whose working conditions are regulated by Federal agencies other than the United States Department of Labor.

(c) The Wyoming Occupational Health and Safety Act gives the State agency full authority to administer and to enforce all laws, rules, and orders protecting employee safety and health in all places of employment in the State. The legislation provides employer and employee representatives an opportunity to accompany inspectors before or during the physical inspection of any workplace for the purpose of aiding such inspection; adequate safeguards to protect trade secrets; effective sanctions against employers; protection of employees against discharge or discrimination; procedures for prompt restraint or elimination of imminent danger situations; the right to review by employers and employees of alleged violations, abatement periods and proposed penalties; and prompt notice to employers and employees of alleged violations of standards and abatement requirements.

(d) Administrative regulations include procedures for permanent and temporary variances; notice to employees or their representatives when no compliance action is taken as a result of a complaint, including procedures for informal review; information to employees on hazards, precautions, symptoms and emergency treatment; and training and education programs for employers and employees, including an on-site consultation program consistent with the criteria set out in the Washington Plan decision (38 FR 2421).

(e) The State intends to promulgate Federal standards covering all of the issues contained in Parts 1910 and 1926 of this chapter but will not cover those found in Parts 1915, 1916, 1917, and 1918 of this chapter (ship repairing, ship building, ship breaking, and longshoring). The State also plans to adopt additional vertical standards relating to oil well drilling and servicing not provided by the Federal program. Future Federal standards shall be promulgated by the State within six months after promulgation by the Secretary of Labor. In the case of product standards the State product standards will be required by compelling local conditions and will not unduly burden interstate commerce.

(f) The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902 of this chapter. All personnel employed to carry out the plan are to be hired under the Wyoming Personnel Merit System which conforms to standards established by the United States Civil Serive Commission. The plan also contains a detailed description of the resources that are to be devoted to it.

1952.341—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: U.S. Department of Labor, Office of the Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room 800, 1726 M Street, NW., Washington, D.C. 20210; Assistant Regional Director, Occupational Safety and Health Administration, U.S. Department of Labor, P.O. Box 3588, Federal Building, 1961 Stout Street, Denver, Colorado 80202; and the Occupational Health and Safety Department, 200 East 8th Avenue, P.O. Box 2186, Cheyenne, Wyoming 82001.

1952.342—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been established with Wyoming, effective December 10, 1981, and based on a determination that Wyoming is operational in the issues covered by the Wyoming occupational health and safety plan, discretionary Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910, 29 CFR Part 1928, and 29 CFR Part 1926. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under Section 11(c) of the Act (29 U.S.C. 660(c)); enforcement relating to any contractors or subcontractors on any Federal establishment where the State cannot obtain entry, including National Parks, Department of Defense facilities, etc.; completion of enforcement actions initiated prior to the effective date of the agreement; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; situations when the State is temporarily unable to exercise its enforcement authority fully or effectively; and investigations and inspections for the purpose of the evaluation of the Wyoming plan under Sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for resumption of the appropriate level of exercise of Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Wyoming.

[47 F.R. 25327, June 11, 1982]

1952.343—DEVELOPMENTAL SCHEDULE

(a) Adoption of Federal standards as State standards by February 1975.

(b) Administrative regulations for recordkeeping and reporting, variances, posting requirements, employee complaint procedures, inspections under the Act, employee exposure to toxic materials, providing information to employees on their exposure to hazards, personal protective equipment, medical examinations, and monitoring, safeguarding trade secrets, administrative review of citations, proposed penalties, and abatement periods, to become effective by June 1, 1974.

REGULATIONS AND PROCEDURES

(c) Amendments to the Wyoming Administrative Procedure Act to be submitted to the State Legislature January 1975 and to become effective by May 1, 1975.

(d) Management Information System to be completed August 1, 1974.

(e) Meris staffing for administration of the program to be completed by August 15, 1974.

(f) Amendments to the State's Fair Employment Practices Act to be submitted to the State Legislature which convenes January 14, 1975.

[39 F.V. 15394, May 3, 1974.]

1952.344—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with § 1952.343(a) the State adopted Federal standards covering all the issues contained in 29 CFR Parts 1910 Subparts D through S, and 1926 (The State will not cover Parts 1915, 1916, 1917, and 1918). (40 FR 8948, March 4, 1975; 41 FR 26767, June 29, 1976.)

(b) In accordance with the requirements of 29 CFR Part 1952.10 the Wyoming posters for private and public employees were approved by the Assistant Secretary on July 14, 1976.

[41 F.R. 30329, July 23, 1976.]

(c) In accordance with § 1952.343(d), Wyoming has developed and implemented a Management Information System.

[41 F.R. 28788, July 13, 1976.]

(d) The State plan has been amended to include an Affirmative Action Plan outlining the State's policy of equal employment opportunity.

[42 F.R. 45907, September 13, 1977.]

(e) Guidelines and Procedures for implementing the State's safety and health program for public employees were approved by the Assistant Secretary on June 1, 1978.

[43 F.R. 34463, August 4, 1978.]

(f) In accordance with § 1952.343(b), Wyoming has promulgated its rules of practice and procedure which were approved by the Assistant Secretary on December 11, 1980.

[45 F.R. 83485, December 19, 1980]

(g) Legislation revising the enabling law to provide for civil enforcement of safety and health violations and revised regulations establishing procedures for review of enforcement actions was approved by the Assistant Secretary on December 19, 1980. (45 FR 83483)

(h) The State has met its plan commitment for hiring enforcement staff under an approved merit system for administration of its health and safety program pursuant to a July 3, 1980 memo from Don Owsley, Administrator of the Wyoming Occupational Health and Safety Department.

(i) As required by 29 CFR 1902.34(b)(3), the personnel operations of the Wyoming Occupational Health and Safety Department have been found to be in substantial conformity with the "Standards for a Merit System of Personnel Administration" by the Office of Personnel Management in a letter dated October 17, 1980.

[47 F.R. 1290, January 12, 1982]

1952.345—CHANGES TO APPROVED PLANS

(a) In accordance with Subpart D of Part 1953 of this Chapter, Wyoming amended the WOHS Act by replacing certain criminal penalties with appropriate civil penalties, effective June 2, 1980. This change was approved by the Assistant Secretary on December 11, 1980

[45 F.R. 83486, December 19, 1980.]

(b) In accordance with Subpart C of Part 1953 of this chapter, amendments to the Wyoming Operations Manual relating to penalty calculation and classifications and sanctions were approved on March 25, 1981.

[46 F.R. 20163, April 3, 1981]

SUBPART CC—ARIZONA

1952.350 –DESCRIPTION OF THE PLAN

(a)

(1) The plan identifies the Arizona Industrial Commission, Division of Occupational Safety and Health, as the State agency designated to administer the plan throughout the State. It adopts the definition of occupational safety and health issues expressed in § 1902.2(c)(1) of this chapter. The State intends to adopt all Federal standards except those found in 29 CFR Parts 1915, 1916, 1917 and 1918 (ship repairing, shipbuilding, shipbreaking, and longshoring) and those subparts of Parts 1910 and 1926 pertaining to industries which are not applicable to Arizona. In addition, the State intends to enforce elevator (ANSI) and boiler pressure vessel (ASME) standards for which there are no Federal counterparts.

(2) The plan provides a description of personnel employed under a merit system; the coverage of employees of political subdivisions; procedures for the development and promulgation of standards, including standards for the protection of employees against new and unforeseen hazards; and procedures for the prompt restraint or elimination of imminent danger situations.

(b)

(1) The plan includes legislation enacted by the Arizona Legislature during its 1974 legislative session amending Title 23, Article 10 of the Arizona Revised Status to bring them into conformity with the requirements of Part 1902 of this chapter. Under the legislation the Industrial Commission will have full authority to enforce and administer laws respecting the safety and health of employees in all workplaces of the State.

(2) The legislation is intended, among other things, to assure inspections in response to employee complaints; give employer and employee representatives an opportunity to accompany inspectors in order to aid inspections; notification of employees or their representatives when no compliance action is taken as a result of alleged violations; notification of employees of their protections and obligations; protection of employees against discharge of discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets; sanctions against employers for violations of standards and orders; employer right of review to an Occupational Safety and Health Review Board and then the courts, and employee participation in review proceedings. The plan also proposes a program of voluntary compliance by employers and employees, including provision for on-site consultation. The State's consultation program should not detract from its enforcement program and the State has given assurances that it will meet the conditions set forth in the Washington Decision (38 FR 2421, January 26, 1973).

(c) The Arizona Plan includes the following documents as of the date of approval:

(1) The plan description documents, in two volumes.

(2) A copy of the enabling legislation as amended and enacted by the State Legislature in its 1974 Session.

(3) Letters from Donald G. Wiseman, Director of the Division of Occupational Safety and Health of the Arizona Industrial Commission to Barry J. White, Associate Assistant Secretary for Regional Programs on October 15, 18, and 24, 1974 submitting information, clarifications, and revisions on several issues raised during the review process, including proposals to the submitted to the Arizona Legislature during its 1975 Session.

1952.351—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of the Associate Assistant Secretary for Regional Programs, Room 850, 1726 M Street NW, Washington, D.C. 20210; Assistant Regional Director, Occupational Safety and Health Administration, Room 9470 Federal Building 450 Golden Gate Avenue, San Francisco, California 94102; and the Director, Occupational Safety and Health Division, Arizona Industrial Commission, 1601 West Jefferson Street (P.O. Box 1907, 85005), Phoenix, Arizona 85007.

1952.352—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) and § 1952.3 of this chapter under which an agreement has been entered into with Arizona, effective September 14, 1981, and based on a determination that Arizona is operational in the issues covered by Arizona occupational safety and health plan, discretionary Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910, 29 CFR Part 1926, and 29 CFR Part 1928. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under Section 11(c) of the Act (29 U.S.C. 660(c)); standards in the maritime and longshoring issues covered by 29 CFR Parts 1915, 1916, 1917, 1918 and 1919 (ship building, shipbreaking, ship repairing, longshoring and gear certification), which issues have been specifically excluded from coverage in the Arizona plan; the enforcement of occupational safety and health standards on Indian reservations; mining operations which have been specifically excluded from coverage under the plan; enforcement relating to any contractors or subcontractors on any Federal establishment where the State cannot obtain entry; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; enforcement in situations where the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of the agreement; and investigations for the purpose of the evaluation of the Arizona plan under Sections 18 (e) and (f) of the Act (29 U.S.C. 667 (e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under Section 18 (e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Arizona.

[47 F.R. 25326, June 11, 1982]

1952.353—DEVELOPMENTAL SCHEDULE

The Arizona State plan is developmental. The following is the developmental schedule as provided by the plan:

(a) Development of a complete management information and control system by July 1, 1976.

(b) The formulation and approval of inter-agency agreements with the Arizona Atomic Energy Commission, the State Health Department and the Arizona Corporation Commission by March 1, 1975.

(c) Promulgation of variance regulations by July 1, 1977.

[41 F.R. 56315, December 28, 1976.]

(d) The promulgation of recordkeeping regulations by March 1, 1975, but full implementation of these regulations will not be until July 1, 1976.

[40 F.R. 11872, March 14, 1975]

(e) The submission of legislative amendments to the Arizona Legislature during its 1977 session.

[41 F.R. 56315, December 28, 1976.]

1952.354—COMPLETION OF DEVELOPMENTAL STEPS AND CERTIFICATION

(a) Implementation of the Arizona occupational safety and health program began on March 1, 1975.

(b) Inter-agency agreements between the Arizona Industrial Commission and the Arizona Department of Health Services were finanlized on November 7, 1974, and March 20, 1975.

(c) Regulations concerning inspections, citations and proposed penalties and the Rules of Procedure for contests before the Governor's Review Board were promulgated on February 28, 1975.

(d) Recordkeeping and reporting regulations were promulgated on march 1, 1975; however, these regulations will not be applicable to public employers until January 1, 1977.

(e) The universe file system for the inspection scheduling system was completed and implemented on March 12, 1976.

(f) An interagency agreement was entered into between the Corporation Commission of Arizona and the Industrial Commission on May 7, 1976 and became effective May 10, 1976.

(g) In accordance with the requirements of § 1952.10, the Arizona State poster was approved by the Assistant Secretary on July 22, 1976.

[41 F.R. 31812, July 30, 1976.]

[41 F.R. 34251, August 13, 1976.]

(h) Arizona occupational safety and health standards comparable to Federal standards in effect as of July 28, 1974, were promulgated on February 28, 1975, and were approved by the Regional Administrator effective August 6, 1976.

[41 F.R. 56315, December 28, 1976.]

(i) Regulations concerning variances were promulgated on November 16, 1977, and were approved by the Assistant Secretary on November 13, 1980.

(j) Regulations concerning discrimination complaints were promulgated on September 22, 1977, and were approved by the Assistant Secretary on November 13, 1980.

[45 F.R. 77000, November 21, 1980]

[45 F.R. 32022, June 19, 1981]

(k) Legislative amendments required to bring the Arizona occupational safety and health law (Arizona Revised Statutes, Chapter 23) into conformity with Federal requirements were enacted effective August 27, 1977.

[46 F.R. 20164, April 3, 1981]

(l) In accordance with § 1902.34 of this chapter, the Arizona occupational safety and health plan was certified, effective September 18, 1981 as having completed all developmental steps specified in the plan as approved on October 29, 1974, on or before November 1, 1977. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[46 F.R. 46322, September 18, 1981]

1952.355—CHANGES TO APPROVED PLANS

On August 4, 1980, the State of Arizona formally withdrew its jurisdiction on Indian Reservations.
[46 F.R. 20164, April 3, 1981]

SUBPART DD—NEW MEXICO

1952.360—DESCRIPTION OF THE PLAN

(a)

(1) The plan identifies the New Mexico Environmental Improvement Agency, with its subordinate organization, the Occupational and Radiation Protection Division, as the State agency designated to administer the plan throughout the State. It adopts the definition of occupational safety and health issues expressed in § 1909.2(c)(1) of this chapter. The State has adopted the Federal Field Operations Manual and all the Federal standards except those found in 29 CFR Parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking, and longshoring). In addition, the Occupational and Radiation Protection Division will be enforcing State standards under the Radiation Protection Act (Chp. 284, Laws of 1971, 12-9-1 through 12-9-11, New Mexico Statutes Annotated). However, since this Act provides protection to the general public, in the event of conflict between Radiation Protection Act standards and occupational safety and health standards, employees will receive the protection provided under the more stringent regulation.

(2) The plan provides a description of personnel employed under a merit system; the coverage of employees of political subdivisions; procedures for the development and promulgation of standards, including standards for the protection of employees against new and unforeseen hazards; and procedures for the prompt restraint of imminent danger situations.

(b)

(1) The plan includes legislation enacted by the New Mexico Legislature during its 1975 legislative session amending Chp. 63, Laws of 1972, 59-14-1 through 59-14-23 of the New Mexico Statutes Annotated to bring them into conformity with the requirements of Part 1902 of this chapter. Under the legislation, the Environmental Improvement Agency will have full authority to enforce and administer laws respecting the safety and health of employees in all workplaces of the State.

(2) The legislation is intended, among other things, to assure inspections in response to employee complaints; give employer and employee representatives an opportunity to accompany inspectors in order to aid inspections; notify employees of their protections and obligations; protect employees against discharge or discrimination in terms and conditions of employment; provide adequate safeguards to protect trade secrets; impose sanctions against employers for violations of standards and orders; insure employer right of review to an Occupational Health and Safety Review Commission and then the courts, and employee participation in the review proceedings. The plan also proposes a program of voluntary compliance by employers and employees, including a provision for on-site consultation. The State's consultation program will not detract from its enforcement program and the State's consultation

program will meet the conditions set forth in the Washington Decision (38 FR 2421, January 26, 1973).

(c) The New Mexico Plan includes the following documents as of the date of approval:

(1) The plan description documents, in one volume.

(2) A copy of the enabling legislation as amended by the State legislature in its 1975 session.

(3) A letter from Aaron Bond, Director of the New Mexico Environmental Improvement Agency, to Barry J. White, Associate Assistant Secretary for Regional Programs, dated November 4, 1975, submitting information, clarification, and revisions on several issues raised during the review process, including proposals to be submitted to the New Mexico Legislature prior to the close of its 1977 legislative session.

1952.361—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of the Associate Assistant Secretary for Regional Programs, New Department of Labor Building, Room N3608, 200 Constitution Ave., N.W., Washington, D.C. 20210; The Technical Data Center, Occupational Safety and Health Administration, New Department of Labor Building, Room N3620, 200 Constitution Ave., N.W., Washington, D.C. 20210; Assistant Regional Director, Occupational Safety and Health Administration, 555 Griffin Square Building, Griffin and Young Streets, Dallas, Texas 75202; and the Director, Environmental Improvement Agency, State of New Mexico, P.O. Box 2348, PERA Building, Room 506, Santa Fe, New Mexico 87503.

1952.362—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with New Mexico, effective October 5, 1981, and based on a determination that New Mexico is operational in the issues covered by the New Mexico occupational safety and health plan, discretionary Federal enforcement authority under Section 18 (e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910, 29 CFR Part 1926, and 29 CFR Part 1928. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under Section 11(c) of the Act (29 U.S.C. 660(c)); standards in the maritime and longshoring issues covered by 29 CFR Parts 1915, 1916, 1917, 1918 and 1919 (ship building, shipbreaking, ship repairing, longshoring and gear certification), which have been specifically excluded from coverage under the plan; enforcement relating to any contractors or subcontractors on any Federal establishment where the State cannot obtain entry; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; situations when the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of the agreement; and investigations and inspections for the purpose of the evaluation of the New Mexico plan under Sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in New Mexico.

[47 F.R. 25326, June 11, 1982]

1952.363—DEVELOPMENTAL SCHEDULE

The New Mexico State Plan is developmental. The following is the developmental schedule as provided by the plan:

(a) Development of a complete and operating management information and control system by January 1, 1976.

(b) Submission of the State's occupational safety and health poster for approval by January 31, 1976.

(c) Promulgation of Rules of Procedures for administrative review by the New Mexico Occupational Health and Safety Review Commission by January 31, 1976.

(d) Enforcement program to achieve operational status by December 1, 1976.

(e) Amendments to basic legislation to become effective by July 1, 1977.

(f) Public employee program to become operational by July 1, 1977.

[40 F.R. 57455, December 10, 1975.]

1952.364—COMPLETED DEVELOPMENTAL STEPS

In accordance with the requirements of § 1952.10, the New Mexico State poster was approved by the Assistant Secretary on July 2, 1976.

[41 F.R. 28788, July 13, 1976.]

SUBPART EE—VIRGINIA

1952.370—DESCRIPTION OF THE PLAN

(a) The Virginia Department of Labor and Industry is the agency responsible for administering the plan and the Virginia Department of Health is designated as responsible for occupational health matters. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c) (1) and all safety and health standards adopted by the Secretary of Labor, except those found in 29 CFR Parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking and longshoring), will be enforced by the State upon approval of the plan by the Assistant Secretary. The State will retain its existing standard applicable to ionizing radiation. New Federal standards will be adopted by the Safety and Health Codes Commission within 6 months after Federal promulgation.

(b)

(1) The plan includes enabling legislation passed by the Virginia legislature in February 1973, and amendments thereto enacted in 1975 and 1976. The Commissioner of the Department of Labor and Industry will have authority to enforce and administer laws regarding the safety and health of employees. Safety inspections will be conducted by the Department of Labor and Industry whereas health inspections will be conducted by the Department of Health. The Department of Labor and Industry will issue citations, set abatement dates, and issue summons and/or warrants for a civil district court determination of violations and assessment of proposed penalties for such safety and health violations. Appeals of the district court's determination shall be to the circuit court sitting without a jury. Fire safety inspections and enforcement will be provided by agreement with the State Fire Marshal. The State plan provides for the coverage of all employees including coverage of public employees within the Commonwealth with the exception of maritime workers, employees of the United States, and employees whose working conditions are regulated by Federal agencies other than the U.S. Department of Labor under section 4 (b) (1) of the Occupational Safety and Health Act of 1970. The Commissioner is authorized to establish a program applicable to employees of the State and its political subdivisions.

(2) The legislation also insures inspections in response to employee complaints; right of employer and employee representatives to accompany inspectors; notification to employees or their representatives when no compliance action is taken as a result of alleged violations; notification to employees of their protections and obligations; protection of employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers for violations of rules, regulations, standards and orders; employee right of review in the State civil courts and employee participation in this judicial review process. In addition, there is provision for prompt restraint of imminent danger situations by injunction and "red-tag" procedures. The plan also proposes to develop a program to encourage voluntary compliance by employers and employees, including provision for onsite consultation, which program will not detract from its enforcement program.

(c) The plan sets out goals and provides a timetable for bringing it into conformity with Part 1902 of this chapter at the end of three years after commencement of operations under the plan. The plan also includes the State Administrative Process Act. A merit system of personnel administration will be utilized.

(d) The plan includes the following documents as of the date of approval:

(1) The plan document and appendices including revised legislation, submitted June 21, 1976.

(2) Letters from the Department of Labor and Industry dated January 15, March 4, and August 23, 1976, and from the Department of Health dated August 18, 1976.

1952.371—WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of the Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room N3112, 200 Constitution Avenue NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 15220 Gateway Center, 3535 Market Street, Philadelphia, Pennsylvania, 19104; Virginia Department of Labor and Industry, Ninth Street Office Building, Richmond, Virginia, 23219.

1952.372—LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with Virginia, effective October 1, 1981, and based on a determination that Virginia is operational in the issues covered by the Virginia occupational safety and health plan, discretionary Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910, 29 CFR Part 1928 and 29 CFR Part 1926. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: Complaints filed with the U.S. Department of Labor alleging discrimination under Section 11(c) of the Act (29 U.S.C. 660(c)); standards in the maritime and longshoring issues covered by 29 CFR Parts 1915, 1916, 1917, 1918 and 1919 (ship building, shipbreaking, ship repairing, longshoring and gear certification), which have been specifically excluded from coverage under the plan; enforcement relating to any contractors or subcontractors on any Federal establishment where the State cannot obtain entry; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; situations when the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of the agreement; and investigations and inspections for the purpose of the evaluation of the Virginia plan under Sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Virginia.

[47 F.R. 25326, June 11, 1982]

1952.373—DEVELOPMENTAL SCHEDULE

The Virginia plan is developmental. Following is a schedule of major developmental steps:

(a) Standards identical to the Federal standards will be completely adopted by January 1, 1978.

(b) A plan for delegation of authority to the State Fire Marshal for fire standards development and enforcement will be completed by December 31, 1976, with necessary legislative action and program implementation by July 1, 1978.

(c) State poster(s) informing public and private employees of their rights and responsibilities will be developed and distributed within 6 months of plan approval.

(d) A voluntary compliance program (including on-site consultation services) will be initiated within 6 months of plan approval.

(e) Both safety and health compliance programs will be fully staffed by FY 1979.

(f) Both safety and health consultation programs will be fully staffed by FY 1979.

(g) An automated Management Information System, including a court reporting system, will be developed within 6 months of plan approval.

(h) An Administrative Procedures Manual which will contain State regulations on standards promulgation, inspections, citations, proposal of penalties, review procedures, variances, etc., will be developed within 6 months of plan approval.

(i) A Compliance Manual establishing procedures to be used by safety and health inspectors and voluntary compliance personnel will be developed within 6 months of plan approval.

(j) A procedure for incorporating State explosives licensing requirements under the State plan will be developed within 6 months of plan approval.

(k) Job descriptions for both safety and health personnel will be reviewed and revised to accurately reflect job functions within 12 months of plan approval.

(l) The Directors of the Industry and Construction Safety Divisions in the Department of Labor and Industry will be brought under State merit system coverage by January 1, 1977.

(m) An inspection scheduling system will be developed for the health program within 6 months of plan approval and for the safety program within 8 months of plan approval.

(n) A public employee program will be developed and implemented within 6 months of plan approval.

[41 F.R. 42655, September 28, 1976.]

1952.374—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with 29 CFR 1952.373(b), Virginia was to develop a plan for delegation of authority to the State Fire Marshal for fire standards enforcement. The State has since announced that the authority for fire standards enforcement will rest with the Department of Labor and Industry, which has been enforcing fire standards since plan approval. This action is judged to have sufficiently fulfilled the commitments of this step.

(b) In accordance with 29 CFR 1952.373(c) and 1952.10, Virginia's safety and health posters for public and private employers were approved by the Assistant Secretary on November 13, 1980.

(c) In accordance with 29 CFR 1952.373(d), Virginia initiated a voluntary compliance program which includes on-site consultation services on March 15, 1977. (The State subsequently arranged for on-site consultation activities for the private sector to be covered by an agreement with the U.S. Department of Labor under Section 7(c)(1) of the Act).

(d) In accordance with 29 CFR 1952.373(f), the State had met its developmental commitment for the staffing of its on-site consultation program in the public sector by fiscal year 1979. On-site consultation in the private sector is covered by a Section 7(c)(1) agreement with the U.S. Department of Labor.

(e) In accordance with the relevant part of 29 CFR 1952.373(g), Virginia met its developmental commitment of developing and implementing an automated Management Information System on July 1, 1977.

(f) In accordance with 29 CFR 1952.373(1), the Directors of the Industry and the Construction Safety Divisions have been placed under the State merit system as of September 1, 1976.

[45 F.R. 77003, November 21, 1980]

SUBPART FF—PUERTO RICO

1952.380 DESCRIPTION OF THE PLAN

(a) The plan designates the Puerto Rico Department of Labor and Human Resources as the agency responsible for the administration and enforcement of the plan throughout the Commonwealth. This includes the responsibility for administration of a public employee program for which the same enforcement provisions and procedures used for the private sector will apply, with the exception of penalites. Penalties in the Commonwealth's Act for the private sector are essentially identical to those in the Federal Act, and Puerto Rico intends to adopt all Federal standards. The commonwealth will exclude from coverage all industries included within the classifications of Marine Cargo Handling (SIC 4463) and Shipbuilding and Repairing (SIC 3713), but will adopt and enforce standards for boilers and elevators and other issues where no Federal OSHA standards exist. The plan provides that program personnel will be employed under a merit system and provides for Management Information System. It also provides procedures for the development and promulgation of standards and procedures for the prompt restraint or elimination of imminent danger situations.

(b) The Puerto Rico Occupational Safety and Health Act was enacted on July 7, 1975, and approved by the Governor on August 5, 1975. It is similar in most respect to the Federal Act. The Puerto Rico Act provides employers the right of administrative review of citations, abatement requirements, and proposed penalties, and employee review of abatement dates, by a hearing examiner appointed by the Puerto Rico Secretary of Labor. The decision by the Secretary may be appealed by the employer or employees to the civil courts. The plan contains a statement of support by the Governor and an opinion by the Secretary of Justice that the Act is consistent with the State's Law and Constitution. Federal procedural regulations will be incorporated into the Commonwealth's regulations and the Federal Compliance Manual will be adopted to fit Puerto Rico's Law. In addition, the Puerto Rico Act requires that a Spanish language version of OSHA standards be made available within three years of plan approval.

(c) The Puerto Rico Act provides for, among other things, inspections in response to employee complaints; an opportunity for employer and employee representatives to accompany inspectors in order to aid inspections, notification of employees or their representatives when no compliance action is taken as a result of a complaint; notification of employees of their protections and obligations; protection for employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets; sanctions against employers for violations of standards and orders; and review of citations by a hearing examiner, with appeal to the Secretary of Labor and the Commonwealth's courts.

(d) The plan also proposes a program of voluntary compliance by employers and employees, including a provision for on-site consultation.

(e) The Puerto Rico Plan includes the following documents as of the date of approval:

(1) The plan description documents, in two volumes.

(2) A copy of the enabling legislation as enacted on July 7, 1975, and signed by the Governor on August 5, 1975.

(3) An assurance of separability of the enforcement personnel from the hearing examiner.

(4) A letter of assurance of the authenticity of the English version of the Puerto Rico OSHA Act from John Cinque Sacarello, Assistant Secretary for Occupational Safety and Health, Puerto Rico Department of Labor, dated December 4, 1975.

1952.381 WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of the Director, Federal Compliance and State Programs, Room N–3112, 200 Constitution Avenue NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway (1 Astor Plaza), New York, N.Y. 10036; Department of Labor, Occupational Safety and Health Office, 414 Barbosa Avenue, Sixth Floor, Hato Rey, Puerto Rico 00917.

1952.382 LEVEL OF FEDERAL ENFORCEMENT

Pursuant to § 1902.20(b)(1)(iii) and § 1954.3 of this chapter under which an agreement has been entered into with Puerto Rico, effective December 8, 1981, and based on a determination that Puerto Rico is operational in the issues covered by the Puerto Rico occupational safety and health plan, discretionary Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR Part 1910, 29 CFR Part 1928, and 29 CFR Part 1926. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to: complaints filed with the U.S. Department of Labor alleging discrimination under Section 11(c) of the Act (29 U.S.C. 660(c)); standards in the maritime and longshoring issues covered by 29 CFR Parts 1915, 1916, 1917, 1918 and 1919 (ship building, shipbreaking, ship repairing, longshoring and gear certification), which have been specifically excluded from coverage under the plan; enforcement relating to any contractors or subcontractors on any Federal establishment where the State cannot obtain entry; enforcement of new Federal standards until the State adopts a comparable standard; situations where the State is refused entry and is unable to obtain a warrant or enforce the right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; situations when the State is temporarily unable to exercise its enforcement authority fully or effectively; completion of enforcement actions initiated prior to the effective date of the agreement; and investigations and inspections for the purpose of the evaluation of the Puerto Rico plan under Sections 18(e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under Section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in Puerto Rico.

[47 F.R. 25326, June 11, 1982]

1952.383 DEVELOPMENTAL SCHEDULE

(a) Position descriptions of State plan personnel by March, 1978.

(b) Public information program (private sector), one year after plan approval.

(c) Analysis for inspection scheduling (private sector), March 1980.

(d) Submit administrative regulations, September, 1978.

(e) Affirmative action plan by July, 1980.

(f) File and promulgate standards, March, 1978.

(g) Adopt the Field Operations Manual, April, 1980.

(h) Adopt management information system, January, 1980.

(j) Employer, employee training schedule, August, 1978.

(k) Public information program (government sector), February, 1980.

(l) Analysis for inspection scheduling (government sector), June, 1980.

(m) Implementation of public employee program, October, 1978.

(n) On-site consultation regulations, March, 1979.

(o) Laboratory, August, 1980.

(p) Posters, February, 1978.

(q) Boiler and Elevator Program, June, 1980.

(r) Staffing on Board for consultation, laboratory, boiler and elevators, February, 1980.

[45 F.R. 54334, August 15, 1980.]

1952.384—COMPLETED DEVELOPMENTAL STEPS

(a) In accordance with the requirements of § 1952.10, Puerto Rico's safety and health posters for private and public employees were approved by the Assistant Secretary, on July 2, 1979.

[44 F.R. 41429, July 17, 1979.]

(b) In accordance with 29 CFR 1952.383(a), Puerto Rico submitted position descriptions for State plan personnel on March 3, 1980, and submitted revised position descriptions on September 8, 1980.

(c) In accordance with 29 CFR 1952.383(b), Puerto Rico submitted its public information program for the private sector on August 10, 1978.

(d) In accordance with 29 CFR 1952.383(c), Puerto Rico submitted its analysis for inspection scheduling in the private sector on June 3, 1980.

(e) In accordance with 29 CFR 1952.383(d), Puerto Rico submitted its administrative regulations on September 13, 1978, and submitted revisions to the regulations on October 27, 1978, March 12, 1979, and February 14, 1980.

(f) In accordance with 28 CFR 1952.383(e), Puerto Rico has developed an affirmative action plan that was found acceptable by the United States Office of Personnel Management on March 27, 1981.

(g) In accordance with 29 CFR 1952.383(f), Puerto Rico has promulgated standards identical to Federal standards and subsequent amendments to reflect changes in and additions to Federal standards. The Regional Administrator approved these supplements on July 14, 1978 (43 FR 37233), June 18, 1979 (44 FR 71470), June 12, 1979 (44 FR 33751), April 17, 1979 (44 FR 22840), and October 23, 1981 (46 FR 52060).

(h) In accordance with 29 CFR 1952.383(g), Puerto Rico submitted its Field Operations Manuals on July 31, 1980, and submitted a revised supplement adopting the Federal OSHA Field Operations Manuals on February 25, 1981.

(i) In accordance with 29 CFR 1952.383(h), Puerto Rico has participated in the Federal OSHA Management Information System since August of 1978.

(j) In accordance with 29 CFR 1952.383(i), Puerto Rico submitted its internal training schedule on May 5, 1980.

(k) In accordance with 29 CFR 1952.383(j), Puerto Rico submitted its employer/employee training schedule on March 11, 1980, and on February 13, 1981, submitted an updated training schedule.

(l) In accordance with 29 CFR 1952.383(k), Puerto Rico submitted its public information program for the government sector on March 13, 1980.

(m) In accordance with 29 CFR 1952.383(l), Puerto Rico submitted its analysis for inspection scheduling in the government sector on August 13, 1980.

(n) In accordance with 29 CFR 1952.383(m), Puerto Rico implemented its public employee program in October 1978.

(o) In accordance with 29 CFR 1952.383(n), Puerto Rico submitted its on-site consultation regulations on March 30, 1979.

(p) In accordance with 29 CFR 1952.383(o), Puerto Rico submitted a State plan supplement on its industrial hygiene laboratory on July 14, 1980.

(q) In accordance with 29 CFR 1952.383(q), Puerto Rico submitted its procedures for a boiler and elevator inspection program on November 28, 1979. Based on OSHA recommendations, Puerto Rico submitted a revision to this supplement deleting the boiler and elevator inspection program from the State plan on November 14, 1980.

(r) In accordance with 29 CFR 1952.383(r), Puerto Rico submitted documentation of staffing levels for the on-site consultation program and the industrial hygiene laboratory on March 3, 1980. Based on OSHA recommendations, Puerto Rico deleted staffing for the boiler and elevator inspection program from its State plan on November 14, 1980.

[47 F.R. 25329, June 11, 1982]

PART 1953

CHANGES TO STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

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SUBPART E—STATE INITIATED CHANGE SUPPLEMENTS

1953.40 Definitions.
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SUBPART F—ADVISORY OPINIONS

1953.50 Definitions.
1953.51 Submission and consideration.

AUTHORITY: Secs. 8(g), 18, 84 Stat. 1600, 1608, 29 U.S.C. 657(g), 667.

SOURCE: The provisions of this Part 1953 appear at 38 F.R. 21361, September 7, 1973 unless otherwise noted.

SUBPART A—GENERAL

1953.1—PURPOSE AND SCOPE

(a) This part applies to the provisions of section 18 of the Williams-Steiger Occupational Safety and Health Act of 1970 (hereinafter referred to as the Act) relating to State plans for the development and enforcement of State safety and health standards. The provisions of this part set forth the procedures by which the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) under a delegation of authority from the Secretary of Labor (Secretary's Order 12-71, 36 F.R. 8754, May 12, 1971) will review changes in a State plan approved in accordance with section 18(c) of the Act and Part 1902 of this chapter, and also provide advisory opinions on proposed changes to be made by a State in implementing its plan.

(b)

(1) States may submit plans covering any occupational safety and health issue with respect to which a Federal standard has been promulgated under section 6 of the Act. These plans must meet the criteria in section 18(c) of the Act and Part 1902 either at the time of submission or in any event not later than the three year period immediately following commencement of the plan's operation, where the plan is developmental.

(2) The Act provides for discretionary concurrent Federal and State authority during this three year developmental period and until the Assistant Secretary determines on the basis of actual operations that the State is applying the criteria of section 18 of the Act and Part 1902. During the period of concurrent Federal and State authority, as well as after a determination has been under section 18(e) that the plan is meeting the criteria of the Act and Part 1902, the State plan will be continually evaluated under section 18(f) of the Act as to the manner in which the provisions (including any assurances) are implemented.

(c)

(1) In accordance with section 18(c) of the Act the Assistant Secretary is authorized to approve State plans and any modifications to these plans. In submitting plans the States have provided assurances that they will continue to meet the requirements in section 18(c) of the Act and 29 CFR Part 1902 during the time the States participate in the Federal program. Such assurances are a fundamental basis for approval of plans. (See 29 CFR 1902.3(c)(1), (d)(1)). This Part establishes procedures for review of those modifications (hereinafter referred to as changes) that are necessary to fulfill the State's assurances, the requirements of the Act, and 29 CFR Part 1902. Responsibility for review of changes is a separate function, but related to the exercise of concurrent authority under section 18(e) of the Act and continuing evaluation under section 18(f) of the Act.

(2) Changes to a plan can be separated into several categories. As the State plan is implemented, supplements will be required to meet developmental schedules approved as part of the plan. These developmental step supplements must be completed within three years after commencement of operations under the plan. The development of the Federal program and the continuing evaluation of the State programs will also require that changes be made in the plans. In addition there could be State initiated changes that would have an impact on the effectiveness of the State program.

(d) Because of the States' need to continue an on-going program, this Part also provides for advisory opinions to requesting States. These opinions, while not final decisions under the review procedures established in this Part will provide the States with a basis for operation pending formal review of a change supplement.

1953.2—GENERAL POLICIES

(a) Approval of a plan submitted under section 18(b) of the Act is based on a finding that the State has or will have, an "at least as effective" program for the enforcement and setting of standards and will meet the criteria in § 1902.3 of the chapter within a three year developmental period when all of the planned activities are performed. The State must also continue to apply the criteria in section 18(c) of the Act and 29 CFR Part 1902, as well as comply with the provisions of the plan and any assurances obtained therein as long as the plan continues in operation. Supplements to the plan will be reviewed in the context of the entire plan as it moves through its developmental and operational stages.

(b) The regulations in this part will apply both before and after determinations have been made under section 18(e) of the Act and will be amended as necessary. Any interested person may file with the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, a written petition for revision, amendment or revocation of any of the provisions of this Part. The petition should include, or be accompanied by, the proposed rule desired and a statement of the reasons therefor and intended effect thereof.

(c) Upon reasonable notice to interested persons, the Assistant Secretary may in any particular proceeding prescribe additional or alternative procedures in order to expedite the review process or for any other good cause which may be consistent with the applicable laws.

(d) Advisory opinions are designed to facilitate implementation of changes in a State plan. In general these opinions will be given for proposed changes such as the adoption of regulation by the States and submission as a formal change.

(e) Copies of all supplements to a plan, all public comments thereon, and all advisory opinions shall be available for inspection and copying at the expense of the person requesting the copy at the locations specified in the Subpart of Part 1952 of this chapter relating to the State plan. The locations include the Office of Federal and State Operations, the Office of the Regional Administrator for the Occupational Safety and Health Administration (hereinafter referred to as the Regional Administrator) in whose Region the State is located, and an office or offices of the State which have been designated by the State for this purpose. The most current copy of a State plan will be located in the State and Regional office pending submission of the change supplements to the Assistant Secretary.

[43 F.R. 51761, November 7, 1978.]

1953.3—PUBLICATION

Whenever a State is required under its law to publish notice of the subject matter of any change required by this Part prior to its adoption by the State, a republication by the State as in

§ 1902.11(a) of this Chapter will not be required. Where the subject matter of the change is not subject to public notice under State law, republication by the State as provided in § 1902.11(a) of this Chapter may be required unless the Assistant Secretary determines the change is minor. Such a minor change could include notice that the State had completed intermediate steps in the implementation of its Management Information System or its staff training program.

1953.4—DELEGATION OF AUTHORITY

(a)

(1) Under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health, the Regional Administrators shall be responsible for review and approval of changes to occupational safety and health standards in approved State plans in accordance with the procedures specified in the applicable subparts of this part.

(2) In conjunction with this delegation of authority, the Assistant Secretary of Labor for Occupational Safety and Health, after consultation with the Office of the Solicitor, will be responsible for advising the Regional Administrators as to interpretations of Federal and State standards so as to avoid inconsistent interpretations particularly in States adopting other than Federal standards. Any person may request such an interpretation from the Assistant Secretary.

(b) Regional Administrators means the employee or officer regularly or temporarily in charge of a Regional Office of the Occupational Safety and Health Administration, U.S. Department of Labor, or any other person or persons who are specifically designated to act for such employee or officer in his absence. The term also includes any employee or officer in the Occupational Safety and Health Administration exercising supervisory responsibility over the Regional Administrator. Such supervisory employee or of ficer is considered to exercise concurrent authority with the Regional Administrator.

[43 F.R. 51761, November 7, 1978.]

SUBPART B—DEVELOPMENTAL CHANGE SUPPLEMENTS

1953.10—DEFINITIONS

(a) Each State with a developmental plan must set forth in its plan those changes which are designed to make its program at least as effective as the Federal program and a timetable for making such changes in accordance with 29 CFR 1902.2(b). A developmental change includes the completion of these developmental steps as well as amendments required in response to failure to meet any steps in the developmental schedule.

(b) Developmental steps must be completed within the three year period immediately following commencement of operations. (See § 1902.2(b) of this chapter.) The date of "commencement of operations" is ordinarily the plan approval date if the State initiates inspections and enforcement activity with respect to standards covered by the approved plan in accordance with the legal authority existing in the State at the time of approval. But in any case, commencement of operations can be no later than the effective date of the grant approved under section 23(g) of the Act. A State may also commence operations by initiating inspections and enforcement activity at some point after approval and prior to the effective date of the grant. Following approval, each State will submit a letter to the Regional Administrator setting the date for commencement operations. These letters will be included in the approved plans.

[43 F.R. 51761, November 7, 1978.]

1953.11—SUBMISSION AND CONSIDERATION

(a) A supplement is required whenever a State completes a developmental step or fails to meet any developmental step. If a State fails to submit the requried supplement when the developmental step was scheduled for completion, the Regional Administrator shall notify the State that a supplement is required and set a time period for submission of the supplement generally not to exceed 30 days.

(b)

(1) An authorized representative of the State agency or agencies designated under section 18(c)(1) to administer the plan shall submit the supplement with 6 copies to the appropriate Regional Administrator for the Occupational Safety and Health Administration.

(2) When a developmental step is missed, the supplement should contain the change with related documentation on the impact of the change on the State plan as well as the following information:

(i) An explanation of why the step was not completed;

(ii) A new date for completion of the step;

(iii) A revised developmental schedule showing specific actions the State proposes to take whenever the missed step would require a new timetable; and

(iv) A demonstration that the current operating program is substantial enough to contribute to the protection of employees in the State through the enforcement of standards. Where appropriate, changes requiring legislative action will be supported as required in § 1902.2(b) of this chapter.

(c) Upon receipt of the supplement, the Regional Administrator shall make a preliminary review of the changes. If his examination reveals any defect in the supplement, the Regional Administrator shall offer assistance to the State and shall provide the agency with an opportunity, generally not to exceed 30 days, to cure such defect. After the preliminary review and after affording the State agency such opportunity to cure any defects, the Regional Administrator, except as provided in § 1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)

(1) Upon receipt of the supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If his examination discloses no cause for rejecting the change the procedures provided in §§ 1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

(2) If examination discloses cause for rejecting the change, the Assistant Secretary shall provide the State a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator for review and submission to the Assistant Secretary a revised supplement, or to show cause why a proceeding should not be commenced either for rejection of the change or for failure to meet the developmental schedule, in accordance with the procedures in § 1902.17 of this chapter on rejection of State plans.

[43 F.R. 51761, November 7, 1978.]

(e) The Assistant Secretary shall review a supplement in the context of the entire plan to see whether it meets the assurances provided in the plan for an "at least as effective" program and whether there is a reasonable exception that the plan will meet the requirements of the Act and the criteria in Part 1902 within the three year developmental period. The decision shall reflect the Assistant Secretary's determination as to whether the supplement meets these requirements.

(f) If a timely request is submitted by the State, a final decision on a developmental change supplement will, to the extent practicable, be made no later than 60 days after the close of the period for written public comment or a hearing, whichever is relevant, unless the Assistant Secretary determines that the change is minor. The Assistant Secretary may defer publication of minor changes until the end of each full year of operations under the plan. The deferral of publication would not be appropriate where the change under consideration included a failure to meet a developmental step.

SUBPART C—FEDERAL PROGRAM CHANGE SUPPLEMENTS

1953.20—DEFINITIONS

When the Assistant Secretary determines that any alteration in the Federal program could have an adverse impact on the "at least as effective as" status of the State program, a program change supplement to a State plan shall be required. Examples of Federal program changes that would require a supplement include promulgation or modification of standards, including emergency temporary standards; revisions in enforcement policies or procedures; and legislative or regulatory changes in the Federal program, including recordkeeping and reporting requirements. A Federal program change that would either not affect or that would result in no diminution of the effectiveness of a State plan, generally would not require action by the States.

1953.21—STANDARDS SUPPLEMENTS

(a)

(1) In accordance with section 18(c) of the Act, § 1902.3(c)(1) and (2) and § 1902.4(b)(2)(i) through (vii) of this chapter, and the assurances contained in an approved plan, each State has agreed that its standards, including emergency temporary standards, will continue to be identical to or at least as effective as Federal Standards promulgated under section 6 of the Act relating to issues covered by the approved plan. The requirement to be at least as effective includes promulgation of new standards as well as modifications, revisions, or revocations of existing standards. Since a State may include standards in addition to Federal standards within an issue covered by an approved plan. It would generally not be necessary for a State to revoke a standard when the comparable Federal standard is revokes and no substitute Federal standard is promulgated.

(2) However, in the case of product standards where section 18(c)(2) of the Act requires that State plans meet certain tests before more stringent standards can be adopted or retained by the States, the modification, revision, or revocation of the Federal product standards would necessitate the modification, revision, or revocation of the comparable State standard unless the State product standard is required "by compelling local conditions and [does] not unduly burden interstate commerce." (See 29 CFR 1952.7).

(b) The procedures in § 1953.22 of this subpart are applicable to the submission of emergency temporary standards. The procedures in § 1953.23 of this subpart apply to submission of supplements for permanent standards as well as to other Federal program changes. When an emergency temporary standard is adopted as a permanent standard the procedure in § 1953.23 is applicable.

1953.22—EMERGENCY TEMPORARY STANDARDS

(a)

(1) Immediately upon publication of an emergency temporary standard in the FEDERAL REGISTER, the Regional Administrator as directed by the Assistant Secretary, shall advise the States of the standard and the reason why a Federal program change supplement shall be required. The notification shall also provide that the State has 30 days after the effective date of the Federal standard to adopt, under the emergency procedures contained in the plan as required under § 1902.4(a) (1) or (b) (2) (v) of this chapter, a State emergency temporary standard if the State plan covers that issue.

(2) Within 15 days after receipt of the notice of a Federal emergency temporary standard from the Regional Administrator, the State shall advise the Regional Administrator, of the action it will take. The State should advise whether:

(i) It plans to adopt the Federal standard,

(ii) it plans to adopt an "at least as effective as" State standard,

(iii) the State has an existing standard that is at least as effective,

(iv) the Federal standard is not within an issue covered by the State plan, or

(v) the State wants to exclude the issue as defined in 29 CFR 1902.2(c) from the plan, which shall be considered as a request for an advisory opinion under Subpart F of this part as to the separability of that issue.

(3) The State shall also include an estimated date of promulgation generally not to exceed 30 days as set out in paragraph (a) of this section. Where the date will exceed 30 days the State shall include a date and the reason why a greater period of time is needed under State law.

(4) The State may also request a finding from the Regional Administrator that there is good cause why the State is not required to adopt the standard on an emergency basis. The request must be supported by relevant data as provided under § 1902.2(c) (2) and (3) of this chapter to show that there is no occupational exposure to the hazard within the State such as to warrant an emergency standard. The provisions in paragraph (b) of this section will be applicable to such a request. The application of this paragraph to emergency temporary standards does not mean that a permanent standard would not be required to be promulgated by the State.

(b)

(1) The emergency temporary standard when required under paragraph (a) of this section, shall be submitted to the Regional Administrator within 5 days following its adoption by the State. The Regional Administrator shall review the supplement and if examination discloses that the State standard is identical to or at least as effective as the comparable Federal standard, the Regional Administrator shall, within a reasonable time generally not to exceed 20 days, publish a notice to that effect approving the State change.

(2) If examination discloses that the State standard is not at least as effective as the comparable Federal standard, or that the period of time for promulgation which is longer than 30 days is not warranted under paragraph (3) of this section, the Regional Administrator shall immediately notify the State of such findings and of an opportunity to cure such defect or show cause why the State temporary emergency standard should not be rejected. Within a reasonable time, generally not to exceed 20 days from the date of such notification, the Regional Administrator shall cause to be published in the FEDERAL REGISTER a notice approving or rejecting the State standard, whichever is appropriate. Where the State has not taken the opportunity to show cause why the standard should not be rejected, the notice of rejection shall have immediate effect. Where the State has presented arguments and data for approval of the standard and the question of rejection of the standard is still in issue, a

limited public comment period may be provided before decision as to approval or rejection of the standard. The Regional Administrator may, in his discretion hold an informal hearing on rejection of the State emergency standard.

[43 F.R. 51761, November 7, 1978.]

1953.23—SUBMISSION AND CONSIDERATION OF FEDERAL PROGRAM CHANGES

(a)

(1) Within a reasonable time after the occurrence of a Federal program change, other than promulgation of emergency temporary standards, the Regional Administrator as directed by the Assistant Secretary, shall advise the States of a Federal program change which requires a State supplement. This notification shall also contain a date by which States must submit the supplement. This date will generally be thirty days from the date of notification, except where the Assistant Secretary determines that the complexity and scope of the change warrants a longer period for submission of the completed Federal program change supplement. This extended submission period may not exceed six months, unless the Assistant Secretary determines that a state has made a timely and specific showing that good cause exists to extend the time limitation for that State.

[43 F.R. 51761, November 7, 1978.]

(2) Where the Federal program change is a new permanent standard, or a more stringent amendment to an existing permanent standard, the State shall promulgate a State standard adopting such new Federal standard, or more stringent amendment to an existing Federal standard, or an at least as effective equivalent thereof, within six months of the date of promulgation of the new Federal standard or more stringent amendment. The Assistant Secretary may permit a longer time period if the State makes a timely demonstration that good cause exists for extending the time limitation.

[40 F.R. 18679, October 17, 1975.]

(b)

(1) An authorized representative of the State agency or agencies designated under section 18(c)(1) of the Act to administer the plan shall submit the supplement with 6 copies to the Regional Administrator. The supplement shall contain the completed change or a schedule for completion of the change where necessary. Whenever the State change differs from the Federal program change, the supplement shall contain documentation on how the change maintains the "at least as effective as" status of the plan.

(2) The State may show cause why a supplement should not be required on the grounds that the State program is already the same as or at least as effective as the Federal program change, or that the failure to adopt the Federal program change would not diminish the effectiveness of the State program. The procedures in this section would be applicable thereto.

(3) Where the Federal program change is a permanent standard the State may also advise the Regional Administrator that the State wants to exclude the issue from the plan. Such a submission shall be considered as a request for an advisory opinion under Subpart F of this part as to the severability of that issue.

(c) Upon receipt of the Federal program change supplement or schedule submitted by the State, the Regional Administrator shall make a preliminary review of the change. If his examination reveals any defect in the supplement or the schedule, the Regional Administrator shall offer assistance to the State and shall provide the agency with an opportunity, generally not to exceed 30 days, to cure such defect either by revising the change or submitting a new or revised schedule or completion of the change. After the preliminary review and after affording the State such opportunity to cure any defects, the Regional Administrator shall submit the Federal program change supplement promptly to the Assistant Secretary, except as provided in § 1953.4 of this part for review and publication of standards supplements.

(d)

(1) Upon receipt of the Federal program change supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If examination discloses that the State change is identical to the Federal program change the Assistant Secretary shall, within a reasonable time, publish notice to that effect approving the State change. If examination discloses that the Federal program change supplement submitted by the State differs significantly from the Federal change or when the timetable for an identical Federal change supplement might require substantial revision, the procedures provided in §§ 1902.11 and 1902.12 of this chapter shall be followed.

(2) If examination discloses cause for rejecting the change or when the State declines to submit a change without sufficient reasons, the Assistant Secretary shall provide the State with a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator, for review and submission to the Assistant Secretary, a revised supplement or to show cause why a proceeding should not be commenced for rejection of the change or for failure to submit change, in accordance with the procedures in § 1902.17 of this chapter.

[43 F.R. 51761, November 7, 1978.]

(e) A Federal program change supplement will be reviewed in the context of the entire plan to determine its impact on the "at least as effective as" status of the plan. The decision shall reflect the Assistant Secretary's determination as to whether the change meets those requirements.

[39 F.R. 32905, September 12, 1974.]

SUBPART D—EVALUATION CHANGE SUPPLEMENTS

1953.30—DEFINITIONS

An evaluation change would be required as a result of an evaluation finding by the Assistant Secretary. Special and periodic evaluations of a State program may show that some portion of a State plan has an adverse impact on the implementation of the State program. Examples of such evaluation findings would include a report that the public employee program as approved is not, in operation, providing for a program as effective as the standards in the approved plan; or that through a reduction in personnel or funding, the State may no longer have adequate resources for administration and enforcement of standards.

1953.31 SUBMISSION AND CONSIDERATION OF EVALUATION CHANGES

(a) Within 30 days after an evaluation report has been made, the Regional Administrator shall advise the State of the evaluation findings that require a supplement and the reasons supporting this decision. This notification shall also contain a date by which State must submit the supplement. This date will generally be thirty days from the date of notification, except where the Assistant Secretary determines that the complexity and scope of the change warrants a longer period for submission of the completed change supplement. This extended submission period may not exceed six months, unless the Assistant Secretary determines that the State has made a timely and specific showing that good cause exists to extend the time limitation for that State.

(b)

(1) An authorized representative of the State agency or agencies designated under section 18(c)(1) to administer the plan shall submit the supplement with 6 copies to the appropriate Regional Administrator. The supplement shall contain the change as well as a timetable for completion of any change when necessary with related documentation on the impact of the change on the State plan and its responsiveness to the Federal evaluation report.

[43 F.R. 51761, November 7, 1978.]

(2) The State may also show cause, in response to the request for an evaluation change supplement, why a supplement should not be required on the ground that the State program is meeting the requirements for an "at least as effective" program. The procedures in this Subpart would be applicable thereto.

(c) Upon receipt of the supplement, the Regional Administrator shall make a preliminary review of the changes. If his examination reveals any defect in the supplement, the Regional Administrator shall offer assistance to the State and shall provide the agency with an opportunity, generally not to exceed 30 days, to cure such defect. After the preliminary review and after affording the State agency such opportunity to cure any defects, the Regional Administrator, except as provided in § 1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)

(1) Upon receipt of the supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If his examination discloses no cause for rejecting the change the procedures provided in §§ 1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

(2) If examination discloses cause for rejecting the change, the Assistant Secretary shall provide the State a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator for review and submission to the Assistant Secretary a revised supplement, or to show cause why a proceeding should not be commenced for rejection of the change or for failure to submit a change, in accordance with the procedures in § 1902.17 of this chapter on rejection of State plans.

[43 F.R. 51761, November 7, 1978.]

(e) The Assistant Secretary shall review the supplement in the context of the entire plan to see whether it meets the objections set out in the evaluation report as well as the requirements for an "at least as effective" State program. The decision shall reflect the Assistant Secretary's determination as to whether the supplement meets those requirements.

SUBPART E—STATE INITIATED CHANGE SUPPLEMENTS

1953.40—DEFINITIONS

A State initiated change would be any change to the State plan other than those defined in Subparts B, C, and D of this Part. Examples of State initiated changes include actions which would effect Federal funding under section 23(g) of the Act such as an increase or decrease in personnel, or coverage of additional issues under the plan; and also legislative, regulatory or administrative policy changes which impact on the effectiveness of the State program including a reassignment of enforcement personnel or legislation restricting coverage under the plan. Such policy changes would not ordinarily include court cases or administrative decisions in individual cases except as they are reflected in State legislative, regulatory, or administrative policy changes.

1953.41—SUBMISSION AND CONSIDERATION

(a) A State initiated change supplement is required whenever the State takes with regard to its plan an action not otherwise covered by this Part that would impact on the effectiveness of the State program. The State shall notify the Regional Administrator of the change and submit the required supplement within 30 days after notifying the Regional Administrator if the change involves legislative amendments or affects Federal funding under section 23(g) of the Act. Other State initiated changes may be submitted at any time generally not to exceed 6 months after the change occurred. If the State fails to notify the Regional Administrator of the change or fails to submit the required supplement within 30 days after notification, the Regional Administrator shall notify the State that a supplement is required and set a time period for submission of the supplement generally not to exceed 15 days.

(b)

(1) An authorized representative of the State agency or agencies designated under section 18(c)(1) to administer the plan shall submit the supplement with 6 copies to the appropriate Regional Administrator. The supplement shall contain the change with related documentation on the impact of the change on the State plan.

[43 F.R. 51761, November 7, 1978.]

(2) The State may also show cause why a supplement should not be required on the grounds that it does not impact on the effectiveness of the State program and that additional Federal funding is not required. The procedures in this Subpart would be applicable thereto.

(c) Upon receipt of the supplement, the Regional Administrator shall make a preliminary review of the changes. If his examination reveals any defect in the supplement, the Regional Administrator shall offer assistance to the State and shall provide the agency with an opportunity, generally not to exceed 30 days, to cure such defect. After the preliminary review and after affording the State agency such opportunity to cure any defects, the Regional Administrator, except as provided in § 1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)

(1) Upon receipt of the supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If his examination discloses no cause for rejecting the change the procedures provided in §§ 1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

(2) If examination discloses cause for rejecting the change, the Assistant Secretary shall provide the State a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator for review and submission to the Assistant Secretary a revised supplement, or to show cause why a proceeding should not be commenced either for rejection of the change or for failure to submit the change, in accordance with the procedures in § 1902.17 of this Chapter on rejection of State plans.

[43 F.R. 51761, November 7, 1978.]

(e) The Assistant Secretary shall review the supplement in the context of the entire plan to determine its impact on the "at least as effective as" status of the plan. The decision shall reflect the Assistant Secretary's determination as to whether the change meets that requirement.

SUBPART F—ADVISORY OPINIONS

1953.50—DEFINITIONS

(a) An authorized representative of a State agency or agencies designated under section 18(c)(1) to administer a plan may request an advisory opinion from the Regional Administrator. These opinions are designed to provide the State with a basis for implementing a change. For example, prior to publication of standards, the State may want a preliminary opinion that the standards are at least as effective as the Federal standards or that a regulation that will be proposed for public comment in the State appears to meet the requirements of section 18 of the Act and Part 1902.

[43 F.R. 51761, November 7, 1978.]

(b) A request for an advisory opinion ordinarily will be considered inappropriate when extensive investigation or evaluation would be necessary. A requesting State will be informed if the same or substantially similar course of action is under review for an advisory opinion in another State or if it has been the subject of a current evaluation, approval, or disapproval proceeding by the Assistant Secretary.

1953.51—SUBMISSION AND CONSIDERATION

(a) The request for advice should be submitted in writing to the Regional Administrator in whose Region the State is located and should include full and complete information regarding the proposed course of action. Conferences with members of the Regional and National office staff may be held before and after submittal of the request and submission of additional information may be required.

(b)

(1) On the basis of the facts submitted, as well as other information available to him, including information from interested persons where relevant, the Regional Administrator, after appropriate consultation with the Office of Federal and State Operations and the Office of the Solicitor will provide an advisory opinion to the State and may take such other action as may be appropriate.

[43 F.R. 51761, November 7, 1978.]

(2) Because of the possibility that the subject matter of an advisory opinion may change during promulgation by the State as a final change, and in order to provide for public comment on the final change, these opinions cannot bind the Assistant Secretary in making his final decision following the procedures specified in the appropriate Subparts of this Part. If the Assistant Secretary decides to revoke or rescind the advisory opinion, notice of such recision or revocation will be given to the requesting State so that it may discontinue the course of action taken. The Assistant Secretary will not proceed against the requesting State with respect to any action taken in good faith reliance upon the advice given under this Subpart, where all relevant facts are fully, completely, and accurately presented and where such action was promptly discontinued upon notification by the Assistant Secretary.

(c) When a State has obtained an advisory opinion under this Part, the formal change supplement submitted under the applicable Subpart of this Part shall specify in what areas, if any, it differs from the material submitted for an advisory opinion.

(d) No later than 15 days after the State has been sent the requested advice, the advisory opinion, and any supplementary information will be placed with the requesting State's plan at the location specified in the Subpart of Part 1952 of this chapter relating to the State plan.

PART 1954

PROCEDURES FOR THE EVALUATION AND MONITORING OF APPROVED STATE PLANS

SUBPART A—GENERAL

1954.1 Purpose and scope.
1954.2 Monitoring system.
1954.3 Concurrent authority.[Reserved]

SUBPART B—STATE MONITORING REPORTS AND VISITS TO STATE AGENCIES

1954.10 Reports from the States.
1954.11 Visits to State agencies.

SUBPART C—COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

1954.20 Complaints about State program administration.
1954.21 Processing and investigating a complaint.
1954.22 Notice provided by States.

AUTHORITY: Sec. 8(g)(2), Pub. L. 91-596, 84 Stat. 1600 (29 U.S.C. 657(g)(2)); sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).

SOURCE: The provisions of this part 1954 appear at 39 F.R. 1837, January 15, 1974, unless otherwise noted.

SUBPART A—GENERAL

1954.1—PURPOSE AND SCOPE

(a) Section 18(f) of the Williams-Steiger Occupational Safety and Health Act of 1970 (hereinafter referred to as the Act) provides that "the Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved * * * is carrying out such plan."

(b) This Part 1954 applies to the provisions of section 18(f) of the Act relating to the evaluation of approved plans for the development and enforcement of State occupational safety and health standards. The provisions of this Part 1954 set forth the policies and procedures by which the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) under a delegation of authority from the Secretary of Labor (Secretary's Order 12-71, 38 F.R. 8754, May 12, 1971) will continually monitor and evaluate the operation and administration of approved State plans.

(c) Following approval of a State plan under section 18(c) of the Act, workplaces in the State are subject to a period of concurrent Federal and State authority. The period of concurrent enforcement authority must last for at least three years. Before ending Federal enforcement authority, the Assistant Secretary is required to make a determination as to whether the State plan, in actual operation, is meeting the criteria in section 18(c) of the Act including the requirements in Part 1902 of this chapter and the assurances in the approval plan itself. After an affirmative determination has been made, the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out section 18(f) of the Act), 9, 10, 13, and 17 of the Act shall not apply with respect to any occupational safety or health issues covered under the plan. The Assistant Secretary may, however, retain jurisdiction under the above provisions in any proceeding commenced under sections 9 or 10 of the Act before the date of the determination under section 18(e) of the Act.

(d) During this period of concurrent Federal and State authority, the operation and administration of the plan will be continually evaluated under section 18(f) of the Act. This evaluation will continue even after an affirmative determination has been made under section 18(e) of the Act.

1954.2—MONITORING SYSTEM

(a) To carry out the responsibilities for continuing evaluation of State plans under section 18(f) of the Act, the Assistant Secretary has established a State Program Performance Monitoring System. Evaluation under this monitoring system encompasses both the period before and after a determination has been made under section 18(e) of the Act. The monitoring system is a three phased system designed to assure not only that developmental steps are completed and that the operational plan is, in fact, at least as effective as the Federal program with respect to standards and enforcement, but also to provide a method for continuing review of the implementation of the plan and any modifications thereto to assure compliance with the provisions of the plan during the time the State participates in the cooperative Federal-State program.

(b) Phase I of the system begins with the initial approval of a State plan and continues until the determination required by section 18(e) of the Act is made. During Phase I, the Assistant Secretary will secure monitoring data to make the following key decisions: (1) What should be the level of Federal enforcement; (2) Should plan approval be continued; and (3) What level of technical assistance is needed by the State to enable it to have an effective program.

(c) Phase II of the system relates to the determination required by section 18(e) of the Act. The Assistant Secretary must decide, after no less than three years following approval of the plan, whether or not to relinquish Federal authority to the State for issues covered by the occupational safety and health program in the State plan. Phase II will be a comprehensive evaluation of the total State program, drawing upon all information collected during Phase I.

(d) Phase III of the system begins after an affirmative determination has been made under section 18(e) of the Act. The continuing evaluation responsibility will be exercised under Phase III, and will provide data concerning the total operations of a State program to enable the Assistant Secretary to determine whether or not the plan approval should be continued or withdrawn.

(e) The State program performance monitoring system provides for, but is not limited to, the following major data inputs: (1) Quarterly and annual reports of State program activity; (2) Visits to State agencies; (3) On-the-job evaluation of State compliance officers; and (4) Investigation of complaints about State program administration.

1954.3—EXERCISE OF FEDERAL DISCRETIONARY AUTHORITY

(a)

(1) When a State plan is approved under section 18(c) of the Act, Federal authority for enforcement of standards continues in accordance with section 18 (e) of the Act. That section prescribes a period of concurrent Federal-State enforcement authority which must last for at least three years, after which time the Assistant Secretary shall make a determination whether, based on actual operations, the State plan meets all the criteria set forth in section 18(c) of the Act and the implementing regulations in 29 CFR Part 1902 and Subpart A of 29 CFR Part 1952. During this period of concurrent authority, the Assistant Secretary may, but shall not be required to, exercise his authority under sections 5 (a) (2), 8, 9, 10, 13 and 17 of the Act with respect to standards promulgated under section 6 of the Act where the State has comparable standards. Accordingly, section 18(e) authorizes, but does not require, the Assistant Secretary to exercise his discretionary enforcement authority over all the issues covered by a State plan for the entire 18(e) period.

(2) Existing regulations at 29 CFR Part 1902 set forth factors to be considered in determining how Federal enforcement authority should be exercised. These factors include: (i) whether the plan is developmental or complete; (ii) results of evaluations conducted by the Assistant Secretary; (iii) the State's schedule for meeting Federal standards; and (iv) any other relevant matters. (29 CFR 1902.1(c) (2) and 1902.20(b) (1) (iii).

(3) Other relevant matters requiring consideration in the decision as to the level of Federal enforcement include: (i) coordinated utilization of Federal and State resources to provide effective worker protection throughout the Nation; (ii) necessity for clarifying the rights and responsibilities of employers and employees with respect to Federal and State authority; (iii) increasing responsibility for administration and enforcement by States under an approved plan for evaluation of their effectiveness; and (iv) the need to react promptly to any failure of the States in providing effective enforcement of standards.

(b) Guidelines for determining the appropriate level of Federal enforcement.

In light of the requirements of 29 CFR Part 1902 as well as the factors mentioned in paragraph (a) (3)) above, the following guidelines for the extent of the exercise of discretionary Federal authority have been determined to be reasonable and appropriate. When a State plan meets all of these guidelines it will be considered operational, and the State will conduct all enforcement activity including inspections in response to employee complaints, in all issues where the State is operational. Federal enforcement activity will be reduced accordingly and the emphasis will be placed on monitoring State activity in accordance with the provisions of this part.

(1) Enabling legislation. A State with an approved plan must have enacted enabling legislation substantially in conformance with the requirements of section 18(c) and 29 CFR Part 1902 in order to be considered operational. This legislation must have been reviewed and approved under 29 CFR Part 1902. States without such legislation, or where State legislation as enacted requires substantial amendments to meet the requirements of 29 CFR Part 1902, will not be considered operational.

(2) Approved State standards. The State must have standards promulgated under State law which standards are the same as Federal standards; have been found to be at least as effective as the comparable Federal standards; or have been reviewed by the Assistant Regional Director under the delegation of authority in 29 CFR 1953.4 and found to provide overall protection equal to comparable Federal standards. Review of the effectiveness of State standards and their enforcement will be a continuing function of the evaluation process. Where State standards in an issue have not been promulgated by the State or have been promulgated and found not to provide overall protection equal to comparable Federal standards, the State will not be considered operational as to those issues.

(3) Personnel. The State must have a sufficient number of qualified personnel who are enforcing the standards in accordance with the State's enabling legislation. Where a State lacks the qualified personnel to enforce in a particular issue; e.g., Occupational Health, the State will not be considered operational as to that issue even though it has enabling legislation and standards.

(4) Review of enforcement actions. Provisions for review of State citations and penalties, including the appointment of the reviewing authority and the promulgation of implementing regulations, must be in effect.

(c)

(1) Evaluation reports. One of the factors to consider in determining the level of Federal enforcement is the result of evaluations conducted under the monitoring system described in this part. While completion of an initial comprehensive evaluation of State operations is not generally a prerequisite for a determination that a State is operational under paragraph (b) of this section, such evaluations will be used in determining the Federal enforcement responsibility in certain circumstances.

(2) Where evaluations have been completed prior to the time a determination as to the operational status of a State plan is made, the results of those evaluations will be included in the determination.

(3) Where the results of one or more evaluations conducted during the operation of a State plan and prior to an 18 (e) determination reveal that actual operations as to one or more aspects of the plan fail in a substantial manner to be at least as effective as the Federal program, and the State does not adequately resolve the deficiencies in accordance with Subpart C of Part 1953, the appropriate level of Federal enforcement activity shall be reinstated. An example of such deficiency would be a finding that State standards and their enforcement in an issue are not at least as effective as comparable Federal standards and their enforcement. Federal enforcement activity may also be reinstated where the Assistant Secretary determines that such action is necessary to assure occupational safety and health protection to employees.

(d)

(1) Recognition of State procedures. In order to resolve potential conflicting responsibilities of employers and employees, Federal authority will be exercised in a manner designed to recognize the implementation of State procedures in accordance with approved plans in areas such as variances, informing employees of their rights and obligations, and recordkeeping and reporting requirements.

(i) Subject to pertinent findings of effectiveness under this part, Federal enforcement proceedings will not be initiated where an employer is in compliance with a State standard which has been found to be at least as effective as the comparable Federal standard, or with any temporary or permanent variance granted to such employer with regard to the employment or place of employment from such State standard, or any order or interim order in connection therewith, or any modification or extension thereof: Provided such variance action was taken under the terms and procedures required under § 1902.4(b) (2) (iv) of this chapter, and the employer has certified that he has not filed for such variance on the same set of facts with the Assistant Secretary.

[40 F.R. 25450, June 16, 1975.]

(ii) Subject to pertinent findings of effectiveness under this part, and approval under Subpart B and F of Part 1953, Federal enforcement proceedings will not be initiated where an employer has posted the approved State poster in accordance with the applicable provisions of an approved State plan and §1952.10 of this chapter.

[39 F.R. 39035, November 5, 1974]

(iii) Subject to pertinent findings of effectiveness under this part, and approval under Subparts B and F of Part 1953, Federal enforcement proceedings will not be initiated where an employer is in compliance with the recordkeeping and reporting requirements of an approved State plan as provided in § 1952.4 of this chapter.

(e) Discrimination complaints.

State plan provisions on employee discrimination do not divest the Secretary of Labor of any authority under section 11(c) of the Act. The Federal authority to investigate discrimination complaints exists even after an affirmative 18(e) determination. (See South Carolina decision 37 FR 25932, December 6, 1972). Employee complaints alleging discrimination under the section 11(c) of the Act will be subject to Federal jurisdiction.

(f)

(1) **Procedural agreements.** A determination as to the operational status of a State plan shall be accompanied by an agreement with the State setting forth the Federal-State responsibilities as follows:

(i) scope of the State's operational status including the issues excluded from the plan, the issues where State enforcement will not be operational at the time of the agreement and the dates for commencement of operations;

(ii) procedures for referral, investigation and enforcement of employee requests for inspections;

(iii) procedures for reporting fatalities and catastrophes by the agency which has received the report to the responsible enforcing authority both where the State has and has not adopted the requirement that employers report as provided in 29 CFR 1904.8;

(iv) specifications as to when and by what means the operational guidelines of this section were met; and

(v) provision for resumption of Federal enforcement activity for failure to substantially comply with this agreement, or as a result of evaluation or other relevant factors.

(2) Upon approval of these agreements, the Assistant Secretary shall cause to be published in the FEDERAL REGISTER, notice of the operational status of each approved State plan.

(3) Where subsequent changes in the level of Federal enforcement are made, similar FEDERAL REGISTER notices shall be published.

[39 F.R. 22124, June 20, 1974.]
[39 F.R. 29182, August 14, 1974.]

SUBPART B—STATE MONITORING REPORTS AND VISITS TO STATE AGENCIES

1954.10—REPORTS FROM THE STATES

(a) In addition to any other reports required by the Assistant Secretary under sections 18(c)(8) and 18(f) of the Act and § 1902.3(1) of this chapter, the State shall submit quarterly and annual reports as part of the evaluation and monitoring of State programs.[1]

(b) Each State with an approved State plan shall submit to the appropriate Regional Office an annual occupational safety and health report in the form and detail provided for in the report and the instructions contained therein.

(c) Each State with an approved State plan shall submit to the appropriate Regional Office a quarterly occupational safety and health compliance and standards activity report in the form and detail provided for in the report and the instructions contained therein.

[1] Such quarterly and annual reports forms may be obtained from the Office of the Assistant Regional Director in whose Region the State is located.

1954.11—VISITS TO STATE AGENCIES

As a part of the continuing monitoring and evaluation process, the Assistant Secretary or his representative shall conduct visits to the designated agency or agencies of State with approved plans at least every 6 months. An opportunity may also be provided for discussion and comments on the effectiveness of the State plan from other interested persons. These visits will be scheduled as needed. Periodic audits will be conducted to assess the progress of the overall State program in meeting the goal of becoming at least as effective as the Federal program. These audits will include case file review and follow-up inspections of workplaces.

SUBPART C—COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

1954.20—COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION

(a) Any interested person or representative of such person or groups of persons may submit a complaint concerning the operation or administration of any aspect of a State plan. The complaint may be submitted orally or in writing to the Assistant Regional Director for Occupational Safety and Health (hereinafter referred to as the Assistant Regional Director) or his representative in the Region where the State is located.

(b) Any such complaint should describe the grounds for the complaint and specify the aspect or aspects of the administration or operation of the plan which is believed to be inadequate. A pattern of delays in processing cases, of inadequate workplace inspections, or the granting of variances without regard to the specifications in the State plans, are examples.

(c)

(1) If upon receipt of the complaint, the Assistant Regional Director determines that there are reasonable grounds to believe that an investigation should be made, he shall cause such investigation, including any workplace inspection, to be made as soon as practicable.

(2) In determining whether an investigation shall be conducted and in determining the timing of such investigation, the Assistant Regional Director shall consider such factors as:

(i) The extent to which the complaint affects any substantial number of persons;

(ii) The number of complaints received on the same or similar issues and whether the complaints relate to safety and health conditions at a particular establishment;

(iii) Whether the complainant has exhausted applicable State remedies; and

(iv) The extent to which the subject matter of the complaint is pertinent to the effectuation of Federal policy.

1954.21—PROCESSING AND INVESTIGATING A COMPLAINT

(a) Upon receipt of a complaint about State program administration, the Assistant Regional Director will acknowledge its receipt and may forward a copy of the complaint to the designee under the State plan and to such other person as may be necessary to complete the investigation. The complainant's name and the names of other complainants mentioned therein will be deleted from the complaint and the names shall not appear in any record published, released or made available.

(b) In conducting the investigation, the Assistant Regional Director may obtain such supporting information as is appropriate to the complaint. Sources for this additional information may include "spot-check" follow-up inspections of workplaces, review of the relevant State files, and discussion with members of the public, employers, employees and the State.

(c) On the basis of the information obtained through the investigation, the Assistant Regional Director shall advise the complainant of the investigation findings and in general terms, any corrective action that may result. A copy of such notification shall be sent to the State and it shall be considered part of the evaluation of the State plan.

(d) If the Assistant Regional Director determines that there are no reasonable grounds for an investigation to be made with respect to a complaint under this Subpart, he shall notify the complaining party in writing of such determination. Upon request of the complainant, or the State, the Assistant Regional Director, at his discretion, may hold an informal conference. After considering all written and oral views presented the Assistant Regional Director shall affirm, modify, or reverse his original determination and furnish the complainant with written notification of his decision and the reasons therefore. Where appropriate the State may also receive such notification.

1954.22—NOTICE PROVIDED BY STATE

(a)

(1) In order to assure that employees, employers, and members of the public are informed of the procedures for complaints about State program administration, each State with an approved State plan shall adopt not later than July 1, 1974, a procedure not inconsistent with these regulations or the Act, for notifying employees, employers and the public of their right to complain to the Occupational Safety and Health Administration about State program administration.

(2) Such notification may be by posting of notices in the workplace as part of the requirement in § 1902.4(c)(2)(iv) of this chapter and other appropriate sources of information calculated to reach the public.

PART 1955

PROCEDURES FOR WITHDRAWAL OF APPROVAL OF STATE PLANS

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AUTHORITY: Secs. 8 (g) (2), 18, 84 Stat. 1598, 1608 (29 U.S.C. 657 (g) (2), 667)

SOURCE: The provisions of this part 1955 appear at 40 F.R. 23465, May 30, 1975 unless otherwise noted.

SUBPART A—GENERAL

1955.1—PURPOSE AND SCOPE

(a) This part contains rules of practice and procedure for formal administrative proceedings on the withdrawal of initial or final approval of State plans in accordance with section 18 (f) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667).

(b) These rules shall be construed to secure a prompt and just conclusion of the proceedings subject thereto.

1955.2—DEFINITIONS

(a) As used in this part unless the context clearly requires otherwise:

(1) "Act" means the Occupational Safety and Health Act of 1970;

(2) "Assistant Secretary" means Assistant Secretary of Labor for Occupational Safety and Health;

(3) "Commencement of a case" under section 18 (f) of the Act means, for the purpose of determining State jurisdiction following the final decision withdrawing approval of a plan, the issuance of a citation.

(4) "Developmental step" includes, but is not limited to, those items listed in the published developmental schedule, or any revisions thereto, for each plan contained in 29 CFR Part 1952. A developmental step also includes those items in the plan as approved under section 18(c) of the Act, as well as those items in the approval decision which are subject to evaluations (see e.g., approval of Michigan plan), which were deemed necessary to make the State program at least as effective as the Federal program within the 3 year developmental period. (see 29 CFR 1953.10 (a)).

(5) "Final approval" means approval of the State plan, or any modification thereof under section 18 (e) of the Act and Subpart D of 29 CFR Part 1902.

(6) "Initial approval" means approval of a State plan, or any modification thereof under section 18 (c) of the Act and Subpart C of 29 CFR Part 1902;

(7) "Party" includes the State agency or agencies designated to administer and enforce the State plan that is the subject of withdrawal proceedings, the Department of Labor, Occupational Safety and Health Administration (hereinafter called OSHA), represented by the Office of the Solicitor and any person participating in the proceedings pursuant to § 1955.17;

(8) "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumentality of the United States or of a State;

(9) "Secretary" means Secretary of Labor;

(10) "Separable portion of a plan" for purposes of withdrawal of approval generally means an issue as defined in 29 CFR 1902.2 (c), i.e. "an industrial, occupational or hazard grouping which is at least as comprehensive as a corresponding grouping contained in

(i) one or more sections in Subpart B or R of Part 1910 of this chapter, or

(ii) one or more of the remaining subparts of Part 1910":

Provided, That wherever the Assistant Secretary has determined that other industrial, occupational or hazard groupings are administratively practicable, such groupings shall be considered separable portions of a plan.

1955.3—GENERAL POLICY

(a) The following circumstances shall be cause for initiation of proceedings under this part for withdrawal of approval of a State plan, or any portion thereof.

(1) Whenever the Assistant Secretary determines that under § 1902.2 (b) of this chapter a State has not substantially completed the developmental steps of its plan at the end of three years from the date of commencement of operations as defined in § 1953.10 (b) of this chapter, a withdrawal proceeding shall be instituted. Examples of a lack of substantial completion of developmental steps include but are not limited to the following:

(i) a failure to develop the necessary regulations and administrative guidelines for an "at least as effective" enforcement program;

(ii) failure to promulgate all or a majority of the occupational safety and health standards in an issue covered by the plan; or

(iii) failure to enact the required enabling legislation.

(2) Whenever the Assistant Secretary determines that there is no longer a reasonable expectation that a State plan will meet the criteria of § 1902.3 of this chapter involving the completion of developmental steps within the three year period immediately following commencement of operations as defined in § 1953.10 (b) of this chapter, a withdrawal proceeding shall be instituted. Examples of a lack of reasonable expectation include but are not limited to the following:

(i) a failure to enact enabling legislation in the first two years following commencement of operations where the remaining developmental steps are dependent on the passage of enabling legislation and cannot be completed within one year; or

(ii) repeal or substantial amendment of the enabling legislation by the State legislature so that the State program fails to meet the criteria in § 1902.3 of this chapter; or

(iii) inability to complete the developmental steps within the indicated three year period.

(3) Whenever the Assistant Secretary determines that in the operation or administration of a State plan, or as a result of any modifications to a plan, there is a failure to comply substantially with any provision of the plan, including assurances contained in the plan, a withdrawal proceeding shall be instituted in a State which has received final approval under section 18 (e) of the Act, and may be instituted in a State which has received initial approval under section 18 (c) of the Act. Examples of a lack of substantial compliance include but are not limited to the following:

(i) where a State over a period of time consistently fails to provide effective enforcement of standards;

(ii) where the rights of employees are circumscribed in such a manner as to diminish the effectiveness of the program;

(iii) where a State, without good cause, fails to continue to maintain its program in accordance with the appropriate changes in the Federal program;

(iv) where a State fails to comply with the required assurances on a sufficient number of qualified personnel and/or adequate resources for administration and enforcement of the program; or

(v) where, on the basis of actual operations, the Assistant Secretary determines that the criteria in section 18 (c) of the Act are not being met, that the period of concurrent authority under section 18 (e) of the Act should not be extended, and that final approval under section 18 (e) of the Act should not be given.

(b) A State may, at any time both before or after a determination under section 18 (e) of the Act, voluntarily withdraw its plan, or any portion thereof, by notifying the Assistant Secretary in writing setting forth the reasons for such withdrawal. Such notification shall be accompanied by a letter terminating the application for related grants authorized under section 23 (g) of the Act in accordance with 29 CFR 1951.25 (d). Upon receipt of the State notice the Assistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of withdrawal of approval of the State plan or portion thereof (see Montana notice 39 FR 2361, June 27, 1974).

(c) Approval of a portion of a plan may be withdrawn under any of the paragraphs in this section when it is determined that that portion is reasonably separable from the remainder of the plan in a manner consistent with the provisions in § 1902.2 (c) of this chapter defining the scope of a State plan. As an example, such a partial withdrawal of approval would be considered appropriate where a State fails to adopt, without good cause shown, Federal standards within a separable issue, such as occupational health.

1955.4—EFFECT OF WITHDRAWAL OF APPROVAL

(a) After receipt of notice of withdrawal of approval of a State plan, such plan, or any part thereof, shall cease to be in effect and the provisions of the Federal Act shall apply within that State. But the State, in accordance with section 18 (f) of the Act, may retain jurisdiction in any case commenced before receipt of the notice of withdrawal of approval of the plan, in order to enforce standards under the plan, whenever the issues involved in the case or cases pending do not relate to the reasons for withdrawal of the plan.

(b) Such notice of withdrawal of approval shall operate constructively as notice of termination of all related grants authorized under section 23 (g) of the Act in accordance with 29 CFR 1951.25 (c).

1955.5—PETITIONS FOR WITHDRAWAL OF APPROVAL

(a) At any time following the initial approval of a State plan under section 18 (c) of the Act, any interested person may petition the Assistant Secretary in writing to initiate proceedings for withdrawal of approval of the plan under section 18 (f) of the Act and this part. The petition shall contain a statement of the grounds for initiating a withdrawal proceeding, including facts to support the petition.

(b)

(1) The Assistant Secretary may request the petitioner for additional facts and may take such other actions as are considered appropriate such as:

(i) publishing the petition for public comment;

(ii) holding informal discussion on the issues raised by the petition with the State and other persons affected; or

(iii) holding an informal hearing in accordance with § 1902.13 of this chapter.

(2) Any such petition shall be considered and acted upon within a reasonable time. Prompt notice shall be given of the denial in whole or in part of any petition and the notice shall be accompanied by a brief statement of the grounds for the denial. A denial of a petition does not preclude future action on those issues or any other issues raised regarding a State plan.

SUBPART B—NOTICE OF FORMAL PROCEEDING

1955.10—PUBLICATION OF NOTICE OF FORMAL PROCEEDING

(a) The Assistant Secretary, prior to any notice of a formal proceeding under this subpart, shall by letter, provide the State with an opportunity to show cause within 45 days why a proceeding should not be instituted for withdrawal of approval of a plan or any portion thereof. When a State fails to show cause why a formal proceeding for withdrawal of approval should not be instituted, the State shall be deemed to have waived its right to a formal proceeding under paragraph (b) of this section and the Assistant Secretary shall cause to be published in the Federal Register a notice of withdrawal of approval of the State plan.

(b)

(1) Whenever the Assistant Secretary, on the basis of a petition under §1955.5 of this part or on his own initiative, determines that approval of a State plan or any portion thereof should be withdrawn, and the State has not waived its right under § 1955.3 (b) of this part or paragraph (a) of this section to a formal proceeding, he shall publish a notice of proposed withdrawal in the FEDERAL REGISTER as set out in § 1955.11 of this part and cause such notice, in the form of a complaint, to be served on the State in accordance with § 1955.15 of this part.

(2) Not later than 5 days following the publication of the notice in the FEDERAL REGISTER, the State agency shall publish, or cause to be published, within the State reasonable notice containing a summary of the information in the Federal notice, as well as the location or locations where a copy of the full notice is available for inspection and public copying.

(3) Two copies of such notice shall be served on the Assistant Secretary in accordance with § 1955.15 of this part.

(c) Not less than 30 days following publication of the notice in the FEDERAL REGISTER, the State shall submit a statement of those items in the notice which are being contested and a brief statement of the facts relied upon, including whether the use of witnesses is intended. This statement shall be served on the Assistant Secretary in accordance with § 1955.15 of this part. When a State fails to respond to the notice of proposed withdrawal under paragraph (b) (1) of this section, the State shall be deemed to have waived its right to a formal proceeding and the Assistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of withdrawal of approval.

1955.11—CONTENTS OF NOTICE OF FORMAL PROCEEDING

(a) A notice of a formal proceeding published under § 1955.10 of this part shall include:

(1) A statement on the nature of the proceeding and addresses for filing all papers;

(2) The legal authority under which the proceeding is to be held;

(3) A description of the issues and the grounds for the Assistant Secretary's proposed withdrawal of approval;

(4) A specified period, generally not less than 30 days after publication of the notice in the FEDERAL REGISTER, for the State to submit a response to the statement of issues in the notice;

(5) A provision for designation of an administrative law judge under 5 U.S.C. 3105 to preside over the proceeding.

(b) A copy of the notice of the proceeding stating the basis for the Assistant Secretary's determination that approval of the plan, or any portion thereof, should be withdrawn shall be referred to the administrative law judge.

1955.12—ADMINISTRATIVE LAW JUDGE; POWERS AND DUTIES

(a) The administrative law judge appointed under 5 U.S.C. 3105 and designated by the Chief Administrative Law Judge to preside over a proceeding shall have all powers necessary and appropriate to conduct a fair, full, and impartial proceeding, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and receive relevant evidence;

(3) To provide for discovery, including the issuance of subpoenas authorized by section 8 (b) of the Act and 5 U.S.C. 555 (d) and 556 (c) (2), and to determine the scope and time limits of the discovery;

(4) To regulate the course of the proceeding and the conduct of the parties and their counsel;

(5) To consider and rule upon procedural requests, e.g. motions for extension of time;

(6) To hold preliminary conferences for the settlement or simplification of issues;

(7) To take official notice of material facts not appearing in the evidence in the record in accordance with § 1955.40 (c) of this part;

(8) To render an initial decision;

(9) To examine and cross-examine witnesses;

(10) To take any other appropriate action authorized by the Act, the implementing regulations, or the Administrative Procedure Act, 5 U.S.C. 554–557 (hereinafter called the APA).

(b) On any procedural question not otherwise regulated by this part, the Act, or the APA, the administrative law judge shall be guided to the extent practicable by the pertinent provisions of the Federal Rules of Civil Procedure.

1955.13—DISQUALIFICATION

(a) If an administrative law judge deems himself disqualified to preside over a particular proceeding, he shall withdraw by notice on the record directed to the Chief Administrative Law Judge. Any party who deems an administrative law judge, for any reason, to be disqualified to preside, or to continue to preside, over a particular proceeding may file a motion to disqualify and remove the administrative law judge, provided the motion is filed prior to the time the administrative law judge files his decision. Such motion must be supported by affidavits setting forth the alleged ground for disqualification. The Chief Administrative Law Judge shall rule upon the motion.

(b) Contumacious conduct at any proceeding before the administrative law judge shall be ground for summary exclusion from the proceeding. If a witness or party refuses to answer a question after being so directed, or refuses to obey an order to provide or permit discovery, the administrative law judge may make such orders with regard to the refusal as are just and proper, including the striking of all testimony previously given by such witness on related matters.

1955.14—EX PARTE COMMUNICATIONS

(a) Except to the extent required for the disposition of *ex parte* matters, the administrative law judge shall not consult any interested person or party or their representative on any fact in issue or on the merits of any matter before him except upon notice and opportunity for all parties to participate.

(b)

(1) Written or oral communications from interested persons outside the Department of Labor involving any substantive or procedural issues in a proceeding directed to the administrative law judge, the Secretary of Labor, the Assistant Secretary, the Associate Assistant Secretary for Regional Programs, the Solicitor of Labor, or the Associate Solicitor for Occupational Safety and Health, or their staffs shall be deemed *ex parte* communications and are not to be considered part of any record or the basis for any official decision, unless the communication is made by motion to the administrative law judge and served upon all the parties.

(2) To facilitate implementation of this requirement, the above-mentioned offices shall keep a log of such communications which shall be made available to the public and which may, by motion, be entered into the record.

(c) No employee or agent of the Department of Labor engaged in the investigation or presentation of the withdrawal proceeding governed by this part shall participate or advise in the initial or final decision, except as a witness or counsel in the proceeding.

1955.15—MANNER OF SERVICE AND FILING

(a) Service of any document upon any party may be made by personal delivery of, or by mailing a copy of the document by certified mail, to the last known address of the party or his representative. The person serving the document shall certify to the manner and date of service.

(b) In addition to serving a copy of any documents upon the parties, the original and two copies of each document shall be filed with the administrative law judge. With respect to exhibits and transcripts, only originals or certified copies need be filed.

1955.16—TIME

Computation of any period of time under these rules shall begin with the first business day following that on which the act, event or development initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national holiday, or other day on which the Department of Labor is closed, the period shall run until the end of the next following business day. When such period of time is 7 days or less, each of the Saturdays, Sundays, and such holidays shall be excluded from the computation.

1955.17—DETERMINATION OF PARTIES

(a) The designated State agency or agencies and the Department of Labor, OSHA, shall be the initial parties to the proceedings. Other interested persons may, at the discretion of the administrative law judge, be granted the right to participate as parties if he determines that the final decision could substantially affect them or the class they represent or that they may contribute materially to the disposition of the proceedings.

(b)

(1) Any person wishing to participate in any proceeding as a party under paragraph (a) of this section shall submit a petition to the administrative law judge within 30 days after the notice of such proceeding has been published in the FEDERAL REGISTER. The petition shall also be served upon the other parties. Such petition shall concisely state:

(i) petitioner's interest in the proceeding;

(ii) how his participation as a party will contribute materially to the disposition of the proceeding;

(iii) who will appear for petitioner;

(iv) the issue or issues as set out in the notice published under § 1955.10 of this part on which petitioner wishes to participate; and

(v) whether petitioner intends to present witnesses.

(2) The administrative law judge shall, within 5 days of receipt of the petition, ascertain what objections, if any, there are to the petition. He shall then determine whether the petitioner is qualified in his judgment to be a party in the proceedings and shall permit or deny participation accordingly. The administrative law judge shall give each petitioner written notice of the decision on his petition promptly. If the petition is denied, the notice shall briefly state the grounds for denial. Persons whose petition for party participation is denied may appeal the decision to the Secretary within 5 days of receipt of the notice of denial. The Secretary will make the final decision to grant or deny the petition no later than 20 days following receipt of the appeal.

(3) Where the petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may require all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners.

1955.18—PROVISION FOR WRITTEN COMMENTS

Any person who is not a party may submit a written statement of position with 4 copies to either the Assistant Secretary or the State at any time during the proceeding which statement shall be made available to all parties and may be introduced into evidence by a party. Mere statements of approval or opposition to the plan without any documentary support shall not be considered as falling within this provision.

SUBPART C—CONSENT FINDINGS AND SUMMARY DECISIONS

1955.20—CONSENT FINDINGS AND ORDERS

(a)

(1) At any time during the proceeding a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the administrative law judge, after consideration of the requirements of section 18 of the Act, the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues.

(2) Any agreement containing consent findings and a rule or order disposing of a proceeding shall also provide:

(i) that the rule or order shall have the same force and effect as if made after a full hearing;

(ii) a waiver of any further procedural steps before the administrative law judge and the Secretary; and

(iii) a waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

(b)

(1) On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(i) submit the proposed agreement to the administrative law judge for his consideration; or

(ii) inform the administrative law judge that agreement cannot be reached.

(2) In the event an agreement containing consent findings and a rule or order is submitted within the time allowed therefore, the administrative law judge may accept such agreement by issuing his decision based upon the agreed findings. Such decision shall be published in the FEDERAL REGISTER.

1955.21—MOTION FOR A SUMMARY DECISION

(a)

(1) Any party may move, with or without supporting affidavits, for a summary decision on all or any part of the proceeding. Any other party may, within 10 days after service of the motion, serve opposing affidavits or file a cross motion for summary decision. The administrative law judge may, in his discretion, set the matter for argument and call for submission of briefs. The filing of any documents under this section shall be with the administrative law judge and copies of any such document shall be served on all the parties.

(2) The administrative law judge may grant such motion if the pleadings, affidavits, material obtained by discovery or otherwise obtained, or matters officially noticed, show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. Affidavits shall set forth such facts as would be admissible in evidence in the hearing and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in paragraph (a) (1) of this section, the party opposing the motion may not rest upon the mere allegations or denials of his pleading; his response must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(3) Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the administrative law judge may refuse the application for summary decision or may order a continuance to permit affidavits to be obtained, or depositions to be taken, or discovery to be had, or may make such other order as is just.

(b)

(1) The denial of all or any part of a motion or cross motion for summary decision by the administrative law judge shall not be subject to interlocutory appeal to the Secretary unless the administrative law judge certifies in writing:

(i) that the ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion; and

(ii) that an immediate appeal from the ruling may materially advance the ultimate termination of the proceeding.

(2) The allowance of such an interlocutory appeal shall not stay the proceeding before the administrative law judge unless the Secretary so orders.

1955.22—SUMMARY DECISION

(a)

(1) Where no genuine issue of material fact is found to have been raised, the administrative law judge shall issue an initial decision to become final 30 days after service thereof upon each party unless, within those 30 days, any party has filed written exceptions to the decision with the Secretary. Requests for extension of time to file exceptions may be granted if the requests are received by the Secretary no later than 25 days after service of the decision.

(2) If any timely exceptions are filed, the Secretary may set a time for filing any response to the exceptions with supporting reasons. All exceptions and responses thereto shall be served on all the parties.

(b)

(1) The Secretary, after consideration of the decision, the exceptions, and any supporting briefs filed therewith and any responses to the exceptions with supporting reasons, shall issue a final decision.

(2) An initial decision and a final decision under this section shall include a statement of:

(i) findings of fact and conclusions of law and the reasons and bases therefor on all issues presented;

(ii) reference to any material fact based on official notice; and

(iii) the terms and conditions of the rule or order made. The final decision shall be published in the FEDERAL REGISTER and served on all the parties.

(c) Where a genuine material question of fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing. A notice of such hearing shall be published in the FEDERAL REGISTER at least 30 days prior to the hearing date.

SUBPART D—PRELIMINARY CONFERENCE AND DISCOVERY

1955.30—SUBMISSION OF DOCUMENTARY EVIDENCE

(a) Where there has been no consent finding or summary decision under Subpart C of this part and a formal hearing is necessary, the administrative law judge shall set a date by which all documentary evidence, which is to be offered during the hearing, shall be submitted to the administrative law judge and served on the other parties. Such submission date shall be sufficiently in advance of the hearing as to permit study and preparation for cross-examination and rebuttal evidence. Documentary evidence not submitted in advance may be received into evidence upon a clear showing that the offering party had good cause for failure to produce the evidence sooner.

(b) The authenticity of all documents submitted in advance shall be deemed admitted unless written objections are filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later date upon clear showing of good cause for failure to have filed such written objections.

1955.31—PRELIMINARY CONFERENCE

(a) Upon his own motion, or the motion of a party, the administrative law judge may direct the parties to meet with him for a conference or conferences to consider:

(1) simplification of the issues;

(2) the necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;

(3) stipulations of fact, and of the authenticity, of the contents of documents;

(4) limitations on the number of parties and of witnesses;

(5) scope of participation of petitioners under § 1955.17 of this part;

(6) establishment of dates for discovery; and

(7) such other matters as may tend to expedite the disposition of the proceedings, and to assure a just conclusion thereof.

(b) The administrative law judge shall enter an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered. Such order shall limit the issues for hearing to those not disposed of by admissions or agreements, and control the subsequent course of the hearing, unless modified at the hearing to prevent manifest injustice.

1955.32—DISCOVERY

(a)

(1) At any time after the commencement of a proceeding under this part, but generally before the preliminary conference, if any, a party may request of any other party admissions that relate to statements or opinions of fact, or of the application of law to fact, including the genuineness of any document described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection or copying. The matter shall be deemed admitted unless within 30 days after service of the request, or within such shorter or longer time as the administrative law judge may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

(2) If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission and when good faith requires that a party qualify his answer or deny only a part of the matter on which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as the reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

(3) The party who has requested the admission may move to determine the sufficiency of the answers or objections. Unless the administrative law judge determines that an objection is justified, he may order either that the matter is admitted or that an amended answer be served. The administrative law judge may, in lieu of these orders, determine that final disposition of the requests be made at a preliminary conference, or at a designated time prior to the hearing. Any matter admitted under this section is conclusively established unless the administrative law judge on motion permits withdrawal or amendment of the admission. Copies of all requests and responses shall be served on all parties and filed with the administrative law judge.

(b)

(1) The testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the administrative law judge or having power to administer oaths.

(2) Any party desiring to take the deposition of a witness may make application in writing to the administrative law judge setting forth:

(i) the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;

(ii) the name and address of each witness; and

(iii) the subject matter concerning which each witness is expected to testify.

(3) Such notice as the administrative law judge may order shall be given by the party taking the deposition to every other party.

(c)

(1) Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing and shall be read to or by the witness unless such examination and reading are waived by the witness and the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness and certified by the officer before whom the deposition was taken. Thereafter, the officer shall seal the deposition, with copies thereof, in an envelope and mail the same by registered or certified mail to the administrative law judge.

(2) Subject to such objections to the questions and answers as were noted at the time of taking the deposition, and to the provisions in § 1955.40 (b) (1) of this part, any part or all of the deposition may be offered into evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof.

(d) Whenever appropriate to a just disposition of any issue in the proceeding the administrative law judge may allow discovery by any other appropriate procedure, such as by interrogatories upon a party or request for production of documents by a party.

(e) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the administrative law judge may make any order which justice requires to limit or condition discovery in order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

1955.33—SANCTIONS FOR FAILURE TO COMPLY WITH ORDERS

(a) If a party or an official or agent of a party fails, without good cause, to comply with an order including, but not limited to, an order for the taking of a deposition, written interrogatories, the production of documents, or an order to comply with a subpoena, the administrative law judge or the Secretary or both, for the purpose of permitting resolution of relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action as is just, including but not limited to the following:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that for the purposes of the proceeding, the matter or matters concerning which the order or subpoena was issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a pleading, or part of a pleading, on a motion or other submission by the party, concerning which the order or subpoena was issued, be stricken or that decision on the pleading be rendered against the party, or both.

(b) Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the initial decision of the administrative law judge or an order or opinion of the

Secretary. The parties may seek, and the administrative law judge may grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence.

1955.34—FEES OF WITNESSES

Witnesses, including witnesses for depositions, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

SUBPART E—HEARING AND DECISION

1955.40—HEARINGS

(a)

(1) Except as may be ordered otherwise by the administrative law judge, the Department of Labor shall proceed first at the hearing.

(2) The Department of Labor shall have the burden of proof to sustain the contentions alleged in the notice of proposed withdrawal, published under § 1955.10 (b) (1) but the proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

(b)

(1) A party shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the administrative law judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(2) The testimony of a witness shall be upon oath or affirmation administered by the administrative law judge.

(3) If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examination or cross-examination, or to the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the administrative law judge may be relied upon subsequently in the proceeding.

(4) Formal exception to an adverse ruling is not required.

(c) Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice, or concerning which the Department of Labor by reason of its functions is presumed to be expert: Provided, that the parties shall be given adequate notice, at the hearing or by reference in the administrative law judge's and the Secretary's decision of the matters so noticed and shall be given adequate opportunity to show the contrary.

(d) When an objection to a question propounded to a witness is sustained, the examining party mav make a specific offer of proof of what the party expects to prove by the answer of the witness orally or in writing. Written offers of proof, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

(e) Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties and the public upon payment of the actual cost of duplication to the Department of Labor in accordance with 29 CFR 70.62 (c).

(f) Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. Corrections may be ordered by the administrative law judge or agreed to in a written stipulation by all parties or their representatives. Where the parties are in disagreement, the administrative law judge shall determine the corrections to be made and so order. Corrections may be interlineated in the official transcript so as not to obliterate the original text.

1955.41—DECISION OF THE ADMINISTRATIVE LAW JUDGE

(a) Within 30 days after receipt of notice that the transcript of the testimony has been filed with the administrative law judge, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge proposed findings of fact, conclusions of law, and rules or orders, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b)

(1) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rules or orders, the administrative law judge shall make and serve upon each party his initial decision which shall become final upon the 30th day after service thereof unless exceptions are filed thereto.

(2) The decision of the administrative law judge shall be based solely upon substantial evidence on the record as a whole and shall state all facts officially noticed and relied upon. The decision of the administrative law judge shall include:

(i) a statement of the findings of fact and conclusions of law, with reasons and bases therefor upon each material issue of fact, law, or discretion presented on the record;

(ii) reference to any material fact based on official notice; and

(iii) the appropriate rule, order, relief, or denial thereof.

1955.42—EXCEPTIONS

(a) Within 30 days after service of the decision of the administrative law judge, any party may file with the Secretary written exceptions thereto with supporting reasons. Such exceptions shall refer to the specific findings of fact, conclusions of law or terms of the rule or order excepted to; and shall suggest corrected findings of fact, conclusions of law, or terms of the rule or order referencing the specific pages of the transcript relevant to the suggestions. Requests for extension of time to file exceptions may be granted if the requests are received by the Secretary no later than 25 days after service of the decision.

(b) If any timely exceptions are filed, the Secretary may set a time for filing any response to the exceptions with supporting reasons. All exceptions and responses thereto shall be served on all the parties.

1955.43—TRANSMISSION OF THE RECORD

If exceptions are filed, the Secretary shall request the administrative law judge to transmit the record of the proceeding to the Secretary for review. The record shall include the State plan; a copy of the Assistant Secretary's notice of proposed withdrawal; the State's statement of items in contention; the notice of the hearing if any; any motions and requests filed in written form and rulings thereon; the transcript of the testimony taken at the hearing, together with any documents or papers filed in connection with the preliminary conference and the hearing itself; such proposed findings of fact, conclusions of law, rules or orders, and supporting reasons as may have been filed; the administrative law judge's decision; and such exceptions, responses, and briefs in support thereof as may have been filed in the proceedings.

1955.44—FINAL DECISION

(a) After review of any exceptions, together with the record references and authorities cited in support thereof, the Secretary shall issue a final decision ruling upon each exception and objection filed. The final decision may affirm, modify, or set aside in whole or in part the findings, conclusions, and the rule or order contained in the decision of the administrative law judge. The final decision shall also include reference to any material fact based on official notice.

(b) The Secretary's final decision shall be served upon all the parties and shall become final upon the 30th day after service thereof unless the Secretary grants a stay pending judicial review.

1955.45—EFFECT OF APPEAL OF ADMINISTRATIVE LAW JUDGE'S DECISION

An administrative law judge's decision shall be stayed pending a decision on appeal to the Secretary. If there are no exceptions filed to the decisions of the administrative law judge, the administrative law judge's decision shall be published in the FEDERAL REGISTER as a final decision and served upon the parties.

1955.46—FINALITY FOR PURPOSES OF JUDICIAL REVIEW

Only a final decision by the Secretary under § 1955.44 of this subpart shall be deemed final agency action for purposes of judicial review. A decision of an administrative law judge which becomes final for lack of appeal is not deemed final agency action for purposes of 5 U.S.C. 704.

1955.47—JUDICIAL REVIEW

The State may obtain judicial review of a decision by the Secretary in accordance with section 18 (g) of the Act.

PART 1956

STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS APPLICABLE TO STATE AND LOCAL GOVERNMENT EMPLOYEES IN STATES WITHOUT APPROVED PRIVATE EMPLOYEE PLANS

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SUBPART E—CONNECTICUT

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AUTHORITY: Secs. 8(g) (2), 18, Pub. L. 91-596, 84 Stat. 1600, 1608 (29 U.S.C. 657(g) 667).

SOURCE: The provisions of this Part 1956 appear at 42 F.R. 12430, March 4, 1977 unless otherwise stated.

SUBPART A—GENERAL

1956.1—PURPOSE AND SCOPE

(a) This Part sets forth procedures and requirements for approval, continued evaluation, and operation of State plans submitted under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for the development and enforcement of State standards applicable to State and local government employees in States without approved private employee plans. Although section 2(b) of the Acts sets forth the policy of assuring every working man and woman safe and healthful working conditions, State and local government agencies are excluded from the definition of "employer" in section 3(5). Only under section 18 of the Act are such public employees ensured protection under the provisions of approved State plan. Where no such plan is in effect with regard to private employees, State and local government employees have not heretofore been assured any protections under the Act. Section 18(b), however, permits States to submit plans with respect to any occupational safety and health issue with respect to which a Federal standard has been promulgated under section 6 of the Act. Under § 1902.2(c) of this Chapter, an issue is defined as "any * * * industrial, occupational, or hazard grouping that is found to be administratively practicable and * * * not in conflict with the purposes of the Act." Since Federal standards are in effect with regard to hazards found in public employment, a State plan covering this occupational category meets the definition of section 18 and the regulations. It is the purpose of this Part to assure the availability of the protections of the Act to public employees, where no State plan covering private employees is in effect, by adapting the requirements and procedures applicable to State plans covering private employees to the situation where State coverage under section 18(b) is proposed for public employees only.

(b) In adopting these requirements and procedures, consideration should be given to differences between public and private employment. For instance, a system of monetary penalties applicable to violations of public employers may not in all cases be necessarily the most appropriate method of achieving compliance. Further the impact of the lack of Federal enforcement authority application to public employers requires certain adjustments of private employer plan procedures in adapting them to plans covering only public employees in a State.

1956.2—GENERAL POLICIES

(a) Policy.

The Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) will approve a State plan which provides an occupational safety and health program for the protection of State and local government employees (hereinafter State and local government employees are referred to **as public employees) that in his judgment meets or will meet the criteria set forth in §1956.10.** Included among these criteria is the requirement that the State plan for public employees (hereinafter such a plan will be referred to as the plan) provides for the development and enforcement of standards relating to hazards in employment covered by the plan which are or will be at least as effective in providing safe and healthful employment and places of employment for public employees as standards promulgated and enforced under section 6 of the Act. In determining whether a plan satisfies the requirement of effectiveness, the Assistant Secretary will measure the plan against the indices of effectiveness set forth in §1956.11.

(b) Developmental plan.

(1) A State plan for an occupational safety and health program for public employees may be approved although, upon submission, it does not fully meet the criteria set forth in §1956.10, if it includes satisfactory assurances by the State that it will take the necessary steps to bring the program into conformity with these criteria within the 3-year period immediately following the commencement of the plan's operation. In such a case, the plan shall include the specific actions the State proposes to take, and a time schedule for their accomplishment which is not to exceed 3 years, at the end of which the plan will meet the criteria in § 1956.10. A developmental plan shall include the dates within which intermediate and final action will be accomplished. Although administrative actions, such as stages for application of standards and enforcement, related staffing, development of regulations may be developmental, to be considered for approval, a State plan for public employees must contain at time of plan approval basic State legislative and/or executive authority under which these actions will be taken. If necessary program changes require further implementing executive action by the Governor or supplementary legislative action by the State, a copy of the appropriate order, or the bill or a draft of legislation that will be or has been proposed for enactment shall be submitted, accompanied by:

(i) A statement of the Governor's support of the legislation or order and

(ii) a statement of legal opinion that the proposed legislation or executive action will meet the requirements of the Act and this Part in a manner consistent with the State's constitution and laws.

(2) On the basis of the State's submission, the Assistant Secretary will approve the plan if he finds that there is a reasonable expectation that the plan for public employees will meet the criteria in § 1956.10 within the indicated 3 year period. In such a case, the Assistant Secretary shall not make a determination that a State is fully applying the criteria in § 1956.10 until the State has completed all the developmental steps specified in the plan which are designed to make it at least as effective as the Federal program for the private sector, and the Assistant Secretary has had at least 1 year to evaluate the plan on the basis of actual operations following the completion of all developmental steps. If at the end of 3 years from the date of commencement of the plan's operation, the State is found by the Assistant Secretary, after affording the State notice and an opportunity for a hearing, not to have substantially completed the developmental steps of the plan, he shall withdraw the approval of the plan.

(3) Where a State plan approved under Part 1902 of this chapter is discontinued, except for its public employee component, or becomes approved after approval of a plan under this Part, the developmental period applicable to the public employee component of the earlier plan will be controlling with regard to any such public employee coverage. For good cause, a State may demonstrate that an additional period of time is required to make adjustments on account of the transfer from one type of plan to another.

(c) Scope of a State plan for public employees.

(1) A State plan for public employees must provide for the coverage of both State and local government employees to the full extent permitted by the State laws and constitution. The qualification "to the extent permitted by its law" means only that where a State may not constitutionally regulate occupational safety and health conditions in certain political subdivisions, the plan may exclude such political subdivision employees from coverage.

(2) The State shall not exclude any occupational, industrial, or hazard grouping from coverage under its plan unless the Assistant Secretary finds that the State has shown there is no necessity for such coverage.

SUBPART B—CRITERIA

1956.10—SPECIFIC CRITERIA

(a) General

A State plan for public employees must meet the specific criteria set forth in this section.

(b) Designation of State agency.

(1) The plan shall designate a State agency or agencies which will be responsible for administering the plan throughout the State.

(2) The plan shall also describe the authority and responsibilities vested in such agency or agencies. The plan shall contain assurances that any other responsibilities of the designated agency shall not detract significantly from the resources and priorities assigned to the administration of the plan.

(3) A State agency or agencies must be designated with overall responsibility for administering the plan throughout the State. Subject to this overall responsibility, enforcement of standards may be delegated to an appropriate agency having occupational safety and health responsibilities or expertise throughout the State. Included in this overall responsibility are the requirements that the designated agency have, or assure the provision of necessary qualified personnel, legal authority necessary for the enforcement of the standards and make reports as required by the Assistant Secretary.

(c) Standards.

The State plan for public employees shall include, or provide for the development or adoption of, standards which are or will be at least as effective as those promulgated under section 6 of the Act. The plan shall also contain assurances that the State will continue to develop or adopt such standards. Indices of the effectiveness of standards and procedures for the development or adoption of standards against which the Assistant Secretary will measure the plan in determining whether it is approvable are set forth in § 1956.11 (b).

(d) Enforcement.

(1) The State plan for public employees shall provide a program for the enforcement of the State standards which is, or will be, at least as effective in assuring safe and healthful employment and places of employment as the standards promulgated by section 6 of the Act; and provide assurances that the State's enforcement program for public employees will continue to be at least as effective in this regard as the Federal program in the private sector. Indices of the effectiveness of a State's enforcement plan against which the Assistant Secretary will measure the plan in determining whether it is approvable are set forth in § 1956.11(c).

(2) The plan shall require State and local government agencies to comply with all applicable State occupational safety and health standards included in the plan and all applicable rules issued thereunder, and employees to comply with all standards, rules, and orders applicable to their

(e) Right of entry and inspection.

The plan shall contain adequate assurances that inspectors will have a right to enter covered workplaces which is at least as effective as that provided in section 8 of the Act for the purpose of inspection or monitoring. Where such entry is refused, the State agency or agencies shall have the authority through appropriate legal process to compel such entry.

(f) Prohibition against advance notice.

The State plan shall contain a prohibition against advance notice of inspections. Any exceptions must be expressly authorized by the head of the designated agency or agencies or his representative and such exceptions may be no broader than those authorized under the Act and the rules published in Part 1903 of this chapter relating to advance notice.

(g) Personnel.

The plan shall provide assurances that the designated agency or agencies and all government agencies to which authority has been delegated, have, or will have, a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards. For this purpose, qualified personnel means persons employed on a merit basis, including all persons engaged in the development of standards and the administration of the plan. Subject to the results of evaluations, conformity with the Standards for a Merit System of Personnel Administration, 45 CFR Part 70, issued by the Secretary of Labor, including any amendments thereto, and any standards prescribed by the U.S. Civil Service Commission, pursuant to section 208 of the Intergovernmental Personnel Act of 1970, modifying or superseding such standards, and guidelines on "at least as effective as" staffing derived from the Federal private employee program will be deemed to meet this requirement.

(h) Resources.

The plan shall contain satisfactory assurances through the use of budget, organizational description, and any other appropriate means, that the State will devote adequate funds to the administration and enforcement of the public employee program. The Assistant Secretary will make periodic evaluations of the adequacy of the resources the State has devoted to the plan.

(i) Employer records and reports.

The plan shall provide assurances that public employers covered by the plan will maintain records and make reports on occupational injuries and illnesses in a manner similar to that required of private employers under the Act.

(j) State agency reports to the Assistant Secretary.

The plan shall provide assurances that the designated agency or agencies shall make such reasonable reports to the Assistant Secretary in such form and containing such information as he may from time to time require. The agency or agencies shall establish specific goals consistent with the goals of the Act, including measures of performance, output, and results which will determine the efficiency and effectiveness of the State program for public employees, and shall make periodic reports to the Assistant Secretary on the extent to which the State, in implementation of its plan, has attained these goals. Reports will also include data and information on the implementation of the specific inspection and voluntary compliance activities included within the plan. Further, these reports shall contain such statistical information pertaining to work-related deaths, injuries and illnesses in employments and places of employment covered by the plan as the Assistant Secretary may from time to time require.

1956.11—INDICES OF EFFECTIVENESS

(a) General.

In order to satisfy the requirements of effectiveness under §§ 1956.10 (c) (1) and (d) (1), the State plan for public employees shall:

(1) Establish the same standards, procedures, criteria, and rules as have been published by the Assistant Secretary under the Act; or

(2) Establish alternative standards, procedures, criteria, and rules which will be measured against each of the indices of effectiveness in paragraphs (b) and (c) of this section to determine whether the alternatives are at least as effective as the Federal program for private employees, where applicable, with respect to the subject of each index. For each index the State must demonstrate by the presentation of factual or other appropriate information that its plan for public employees will, to the extent practicable, be at least as effective as the Federal program for private employees.

(b) Standards.

(1) The indices for measurement of a State plan for public employees with regard to standards follow in paragraph (b) (2) of this section. The Assistant Secretary will determine whether the State plan for public employees satisfies the requirements of effectiveness with regard to each index as provided in paragraph (a) of this section.

(2) The Assistant Secretary will determine whether the State plan for public employees:

(i) Provides for State standards which are or will be at least as effective as the standards promulgated under section 6 of the Act. In the case of any State standards dealing with toxic materials or harmful physical agents, they should adequately assure, to the extent feasible, that no employee will suffer material impairment of health or functional capacity, even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life, by such means as, in the development and promulgation of standards, obtaining the best available evidence through research, demonstration, experiments, and experience under this and any other safety and health laws.

(ii) Provides an adequate method to assure that its standards will continue to be at least as effective as Federal standards, including Federal standards which become effective subsequent to any approval of the plan.

(iii) Provides a procedure for the development and promulgation of standards which allow for the consideration of pertinent factual information and affords interested persons, including employees, employers and the public, an opportunity to participate in such processes, by such means as establishing procedures for consideration of expert technical knowledge, and providing interested persons, including employers, employees, recognized standards-producing organizations, and the public, an opportunity to submit information requesting the development or promulgation of new standards or the modification or revocation of existing standards and to participate in any hearings. The index may also be satisfied by such means as the adoption of Federal standards, in which case the procedures at the Federal level before adoption of a standard under section 6 may be considered to meet the conditions of this index.

(iv) Provides authority for the granting of variances from State standards upon application of a public employer or employers which correspond to variances authorized under the Act, and for consideration of the views of interested parties, by such means as giving affected employees notice of each application and an opportunity to request and participate in hearings or other appropriate proceedings relating to applications for variances.

(v) Provides for prompt and effective standards setting actions for the protection of employees against new and unforeseen hazards, by such means as the authority to promulgate emergency temporary standards. Such authority is particularly appropriate for those situations where public employees are exposed to unique hazards for which existing standards do not provide adequate protection.

(vi) Provides that State standards contain appropriate provision for the furnishing to employees of information regarding hazards in the workplace, including information about suitable precautions, relevant symptoms, and emergency treatment in case of exposure; by such means as labelling, posting, and where appropriate, results of medical examinations, being furnished only to appropriate State officials, and if the employee so requests, to his physician.

(vii) Provides that State standards, where appropriate, contain specific provision for the protection of employees from exposure to hazards, by such means as containing appropriate provision for the use of suitable protective equipment and for control or technological procedures with respect to such hazards, including monitoring or measuring such exposure.

(c) Enforcement.

(1) The indices for measurement of a State plan for public employees with regard to enforcement follow in paragraph (c) (2) of this section. The Assistant Secretary will determine whether the plan satisfies the requirements of effectiveness with regard to each index as provided in paragraph (a) of this section.

(2) The Assistant Secretary will determine whether the State plan for public employees:

(i) Provides for inspection of covered workplaces in the State by the designated agency or agencies or any other agency which is duly delegated authority, including inspections in response to complaints where there are reasonable grounds to believe a hazard exists, in order to assure, so far as possible, safe and healthful working conditions for covered employees by such means as providing for inspections under conditions such as those provided in section 8 of the Act.

(ii) Provides an opportunity for employees and their representatives, before, during, and after inspections, to bring possible violations to the attention of the State or local agency with enforcement responsibility in order to aid inspections, by such means as affording a representative of the employer, and a representative authorized by employees, an opportunity to accompany the inspector during the physical inspection of the workplace, or where there is no authorized representative, provide for consultation by the inspector with a reasonable number of employees.

(iii) Provides for notification of employees, or their representatives, when the State decides not to take compliance action as a result of violations alleged by such employees or their representatives, and further provides for informal review of such decisions, by such means as written notification of decisions not to take compliance action and the reasons therefor, and procedures for informal review of such decisions as written statements of the disposition of such review.

(iv) Provides that public employees be informed of their protections and obligations under the Act, including the provisions of applicable standards, by such means as the posting of notices or other appropriate sources of information.

(v) Provides necessary and appropriate protection to an employee against discharge or discrimination in terms and conditions of employment because he has filed a complaint, testified, or otherwise acted to exercise rights under the State program for public employees for himself or others, by such means as providing for appropriate sanctions against the State or local agency for such actions, and for providing for the withholding, upon request, of the names of complainants from the employer.

(vi) Provides that public employees have access to information on their exposure to toxic materials or harmful physical agents and receive prompt information when they have been or are being exposed to such materials or agents in concentrations or at levels in excess of those prescribed by the applicable safety and health standards, by such means as the observation by employees of the monitoring or measuring of such materials or agents, employee access to the records of such monitoring or measuring, prompt notification by a public employer to any employee who has been or is being exposed to such agents or materials in excess of the applicable standards, and information to such employee of corrective action being taken.

(vii) Provides procedures for the prompt restraint or elimination of any conditions or practices in covered places of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided for in the plan, by such means as immediately informing employees and employers of such hazards, taking steps to obtain immediate abatement of the hazard by the employer, and, where appropriate, authority to initiate necessary legal proceedings to require such abatement.

(viii) Provides that the designated agency (or agencies) and any agency to which it has duly delegated authority, will have the necessary legal authority for the enforcement of standards by such means as provisions for appropriate compulsory process to obtain necessary evidence or testimony in connection with inspection and enforcement proceedings.

(ix) Provides for prompt notice to public employers and employees when an alleged violation of standards has occurred, including the proposed abatement requirements, by such means as the issuance of a written citation to the public employer and posting of the citation at or near the site of the violation; further provides for advising the public employer of any proposed sanctions, wherever appropriate, by such means as a notice to the employer by certified mail within a reasonable time of any proposed sanctions.

(x) Provides effective sanctions against public employers who violate State standards and orders, or applicable public agency standards, such as those prescribed in the Act. In lieu of monetary penalties a complex of enforcement tools and rights, such as various forms of equitable remedies available to the designee including administrative orders; availability of employee rights such as right to contest citations, and provisions for strengthened employee participation in enforcement may be demonstrated to be as effective as monetary penalties in achieving compliance in public employment. In evaluating the effectiveness of an alternate system for compelling compliance, elements of the enforcement educational program such as a system of agency self inspection procedures, and in-house training programs, and employee complaint procedures may be taken into consideration.

(xi) Provides for an employer to have the right of review of violations alleged by the State or any agency to which it has duly delegated authority, abatement periods and proposed penalties, where appropriate, for employees or their representatives to challenge the reasonableness of the period of time fixed in the citation for the abatement of the hazard, and for employees or their representatives to have an opportunity to participate in review proceedings, by such means as providing for administrative review, with an opportunity for a full hearing on the issues.

(xii) Provides that the State will undertake programs to encourage voluntary compliance by public employers and employees by such means as conducting training and consultation with such employers and employees, and encouraging agency self-inspection programs.

(d) Additional Indices.

Upon his own motion, or after consideration of data, views, and arguments received in any proceedings held under Subpart C of this Part, the Assistant Secretary may prescribe additional indices for any State plan for public employees which shall be in furtherance of the purpose of this section.

SUBPART C—APPROVAL, CHANGE, EVALUATION AND WITHDRAWAL OF APPROVAL PROCEDURES

1956.20—PROCEDURES FOR SUBMISSION, APPROVAL AND REJECTION

The procedures contained in Subpart C of Part 1902 of this Chapter shall be applicable to submission, approval, and rejection of State plans submitted under this Part, except that the information required in § 1902.20 (b) (1) (iii) would not be included in decisions of approval.

1956.21—PROCEDURES FOR SUBMITTING CHANGES

The procedures contained in part 1952 of this Chapter shall be applicable to submission and consideration of developmental, Federal program, evaluation, and State-initiated change supplements to plans approved under this Part.

1956.22—PROCEDURE FOR EVALUATION AND MONITORING

The procedures contained in Part 1954 of this Chapter shall be applicable to evaluation and monitoring of State plans approved under this Part, except that the decision to relinquish Federal enforcement authority under section 18(e) of the Act is not relevant to Phase II and III monitoring under § 1954.2 and the guidelines for exercise of Federal discretionary enforcement authority provided in § 1954.3 are not applicable to plans approved under this Part. The factors listed in § 1902.37 (b) of this Chapter, except those specified in § 1902.37 (b) (11) and (12), which would be adapted to the State compliance program, provide the basis for monitoring.

1956.23—PROCEDURES FOR CERTIFICATION OF COMPLETION OF DEVELOPMENT AND DETERMINATION ON APPLICATION OF CRITERIA

REGULATIONS AND PROCEDURES

The procedures contained in §§ 1902.33 and 1902.34 of this Chapter shall be applicable to certification of completion of developmental steps under plans approved in accordance with this Part. Such certification shall initiate intensive monitoring of actual operations of the developed plan, which shall continue for at least a year after certification, at which time a determination shall be made under the procedures and criteria of §§ 1902.38, 1902.39, 1902.40 and 1902.41, that on the basis of actual operations, the criteria set forth in §§ 1956.10 and 1956.11 of this Part are being applied under the plan. The factors listed in § 1902.37 (b) of this Chapter, except those specified in § 1902.37 (b) (11) and (12) which would be adapted to the State's compliance program provide the basis for making the determination of operational effectiveness.

1956.24—PROCEDURES FOR WITHDRAWAL OF APPROVAL

The procedures and standards contained in Part 1955 of this Chapter shall be applicable to the withdrawal of approval of plans approved under this Part 1956, except that (because these plans, as do public employee programs approved and financed in connection with a State plan covering private employees, must cover all employees of State and local agencies in a State whenever a State is constitutionally able to do so, at least developmentally), no industrial or occupational issues may be considered a separable portion of a plan under § 1955.2 (a) (10); and, as Federal standards and enforcement do not apply to State and local government employers, withdrawal of approval of a plan approved under this Part 1956 could not bring about application of the provisions of the Federal Act to such employers as set out in § 1955.4 of this Chapter.

SUBPART D—GENERAL PROVISIONS AND CONDITIONS [RESERVED]

SUBPART E—CONNECTICUT

1956.40 DESCRIPTION OF THE PLAN

(a) The plan designates the Connecticut Department of Labor as the State agency responsible for administering the plan throughout the State. The State has adopted all Federal standards promulgated as of September 1977 and has given assurances that it will continue to adopt all Federal standards, revisions, and amendments. The State further assured that in those situations where public employees are exposed to unique hazards for which existing standards do not provide adequate protection, effective State standards will be adopted. The plan includes legislation, Public Act 73-379, passed by the Connecticut Legislature in 1973 and amended as follows: P.A. 74-176, P.A. 75-285, P.A. 77-107, and P.A. 77-610. Under the legislation the Connecticut Department of Labor, Occupational Safety and Health Division has full authority to enforce and administer all laws and rules protecting the safety and health of employees of the State and its political subdivisions. The plan is accompanied by a statement of the Governor's support and a legal opinion that the Connecticut legislation meets the requirements of the Occupational Safety and Health Act of 1970 and is in accord with the constitution of the State.

(b) The plan establishes procedures for variances and the protection of employees from hazards under a variance; insures inspection in response to complaints; provides employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations before, during, and after inspections; notification to employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protection; protection of employees against discharge or discrimination in terms and conditions of employment; provision for prompt notices to employers and employees of violations of standards and abatement requirements; sanctions against employers for violation of standards and orders; employer's right to appeal citations for violations, abatement periods and proposed penalties; employee's right to appeal abatement periods; and employee participation in review proceedings. Also included are provisions for right of entry for inspection, "prohibition" of advance notice of inspection and the requirement for both employers and employees to comply with the applicable rules, standards, and orders, and employer obligations to maintain records and provide reports as required. Further, the plan provides assurances of a fully trained adequate staff and sufficient funding.

(c) The plan includes the following documents as of the date of approval:

(1) The plan document and appendixes submitted January 30, 1978.

(2) Letter from the Commissioner, Connecticut Department of Labor, dated September 19, 1978, providing supplemental assurances.

1956.41 WHERE THE PLAN MAY BE INSPECTED

A copy of the plan may be inspected and copies during normal business hours at the following locations: Office of State programs, 2100 M Street NW, Room 149, Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1804, John F. Kennedy Federal Building, Boston, Mass. 02203; Connecticut Department of Labor, 200 Folly Brook Boulevard, Wethersfield, Conn. 06109.

1956.43 DEVELOPMENTAL SCHEDULE

The Connecticut plan is developmental. The following is a schedule of major developmental steps as provided by the plan:

(a) A new State poster will be printed, by December 15, 1978, in order to reflect coverage of the public sector only.

(b) Standards identical to or at least as effective as all existing Federal standards will be adopted by February 1, 1979.

(c) Connecticut regulations equivalent to the following Federal provisions will be revised by April 1, 1979, to show coverage of the public sector only and to accurately reflect the current program: 29 CFR Part 1903 (Inspections, citations, and proposed penalties); 29 CFR Part 1904 Recording and Reporting Occupational Injuries and Illnesses); 29 CFR Part 1905 (Variance Rules); 29 CFR Part 2200 (Review Commission); and the Field Operations Manual.

(d) The State will submit revised and updated provisions dealing with employee discrimination by May 1, 1979.

(e) The State will prepare by June 1, 1979, a comprehensive list of government entities whose employees are covered by the plan, giving the number of employees for each entity, describing the work performed, and assigning for each entity a standard industrial classification (SIC) code.

(f) The State will resubmit its plan in the required outline format by October 1, 1979.

[43 F.R. 51390, November 3, 1978.]

PART 1960

BASIC PROGRAM ELEMENTS FOR FEDERAL EMPLOYEE OCCUPATIONAL SAFETY AND HEALTH PROGRAMS AND RELATED MATTERS

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1960.84 Purpose.
1960.85 Role of the Secretary.

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AUTHORITY: Secs. 19 and 24 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614, (29 U.S.C. 668, 673)); Secretary of Labor's Order No. 8-76 (41 FR 25059); E.O. 12196.

SOURCE: The provisions of this part 1960 appear at 45 F.R. 69796, Oct. 21, 1980 unless otherwise noted.

REGULATIONS AND PROCEDURES

SUBPART A—GENERAL

1960.1—PURPOSE AND SCOPE

(a) Section 19 of the Occupational Safety and Health Act (the Act) contains special provisions to assure safe and healthful working conditions for Federal employees. Under that section, it is the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6 of the Act. The Secretary of Labor (the Secretary), under section 19, is to report to the President certain evaluations and recommendations with respect to the programs of the various agencies, and the duties which section 24 of the Act imposes on the Secretary of Labor necessarily extend to the collection, compilation and analysis of occupational safety and health statistics from the Federal Government. The role of the General Services Administration in this area stems from its duties as the Government's principal landlord and from its specific safety and health responsibilities under 41 CFR Part 101, Subchapter D, Federal Property Management Regulations.

(b) Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, issued February 26, 1980, prescribes additional responsibilities for the heads of agencies, the Secretary, and the General Services Administrator. Among other duties, the Secretary is required to issue basic program elements in accordance with which the heads of agencies shall operate their safety and health programs. The purpose of this part is to issue these basic program elements. Although agency heads are required to operate a program in accordance with the basic program elements, those elements contain numerous provisions which, by their terms, permit agency heads the flexibility necessary to implement their programs in a manner consistent with their respective missions, sizes, and organizations. Moreover, an agency head, after consultation with agency employees or their representatives and with appropriate safety and health committees may request the Secretary to consider approval of alternate program elements; the Secretary, after consultation with the Federal Advisory Council on Occupational Safety and Health, may approve such alternate program elements.

(c) Under Executive Order 12196, the Secretary is required to perform various services for the agencies, including consultation, training, recordkeeping, inspections, and evaluations. Agencies are encouraged to seek such assistance from the Secretary as well as advice on how to comply with the basic program elements and operate effective occupational safety and health programs. Upon the request of an Agency, the Office of Federal Agency Safety and Health Programs will review proposed agency plans for the implementation of program elements.

(d) Section 19 of the Act and the Executive Order require specific opportunities for employee participation in the operation of agency safety and health programs. The manner of fulfilling these requirements is set forth in part in these program elements. These requirements are separate from but consistent with the Federal Service Labor Management Relations Statute (5 U.S.C. 71) and regulations dealing with labor-management relations within the Federal Government.

(e) Executive Order 12196 and these basic program elements apply to all agencies of the Executive Branch. They apply to all Federal employees. They apply to all working conditions of Federal employees except those involving uniquely military equipment, systems, and operations.

(f) The Executive Order and this part do not apply to employees or working conditions of employees of private contractors performing work under government contracts, regardless of whether such privately employed workers perform their duties in government owned or leased facilities with government equipment or together with government personnel. Protection of employees of private contractors is assured under the other provisions of the Act, not under Section 19. No provision of the Executive Order or this part shall be construed in any manner to relieve any private employer, including Federal contractors, or their employees of any rights or responsibilities under the provisions of the Act, including compliance activities conducted by the Department of Labor or other appropriate authority.

(g) Federal employees who work in establishments of private employers are covered by their agencies' occupational safety and health programs. Although an agency may not have the authority to require abatement of hazardous conditions in a private sector workplace, the agency head must assure safe and healthful working conditions for his/her employees. This shall be accomplished by administrative controls, personal protective equipment, or withdrawal of Federal employees from the private sector facility to the extent necessary to assure that the employees are protected.

1960.2—Definitions

(a) The term "Act" means the Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.).

(b) The term "agency" for the purposes of this part means an Executive Department, as defined in 5 U.S.C. 101, or any employing unit or authority of the Executive Branch of the Government. For the purposes of this part to the extent it implements section 19 of the Act, the term "agency" includes the United States Postal Service. By agreement between the Secretary of Labor and the head of an agency of the Legislative or Judicial Branches of the Government, these regulations may be applicable to such agencies.

(c) The term "agency liaison" means an agency person appointed with full authority and responsibility to represent the occupant agency management with the official in charge of a facility or installation such as a GSA Building Manager.

(d) The term "building manager" means the person who manages one or several buildings under the authority of a Federal agency. For example, a building manager may be the GSA person who manages building(s) for GSA.

(e) As used in Executive Order 12196, the term "consultation with representatives of the employees thereof" shall include such consultation, conference, or negotiation with representatives of agency employees as is consistent with the Federal Service Labor Management Relations Statute (5 U.S.C. 71), or collective bargaining or other labor-management arrangements. As used in this part, the term "representative of employees" shall be interpreted with due regard for any obligation imposed by the aforementioned statute and any other labor-management arrangement that may cover the employees involved.

(f) The term "Designated Agency Safety and Health Official" means the individual who is responsible for the management of the safety and health program within an agency, and is so designated or appointed by the head of the agency pursuant to § 1960.6 and the provisions of Executive Order 12196.

(g) The term "employee" as used in this part means any person, other than members of the Armed Forces, employed or otherwise suffered, permitted, or required to work by an "agency" as the latter term is defined in paragraph (b) of this section.

(h) The term "establishment" means a single physical location where business is conducted or where services or operations are performed. Where distinctly separate activities are performed at a single physical location, each activity shall be treated as a separate "establishment." Typically, an "establishment" as used in this part refers to a field activity, regional office, area office, installation, or facility.

(i) The term "uniquely military equipment, systems, and operations" excludes from the scope of the order the design of Department of Defense equipment and systems that are unique to the national defense mission, such as military aircraft, ships, submarines, missiles, and missile sites, early warning systems, military space systems, artillery, tanks, and tactical vehicles; and excludes operations that are uniquely military such as field maneuvers, naval operations, military flight operation, associated research test and development activities, and actions required under emergency conditions. The term includes within the scope of the Order Department of Defense workplaces and operations comparable to those of industry in the private sector such as: Vessel, aircraft, and vehicle repair, overhaul, and

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modification (except for equipment trials); construction; supply services; civil engineering or public works; medical services; and office work.

(j) The term "incidence rates" means the number of injuries and illnesses, or lost workdays, per 100 full-time workers. Rates are calculated as

$$\frac{N \times 200{,}000.}{EH}$$

N=number of injuries and illnesses, or number of lost workdays.
EH=total hours worked by all employees during a month, a quarter, or a calendar year.
200,000=base for 100 full-time equivalent workers (working 40 hours per week, 50 weeks per year).

(k) The term "inspection" means a comprehensive survey of all or part of a workplace in order to detect safety and health hazards. Inspections are normally performed during the regular work hours of the agency, except as special circumstances may require. Inspections do not include routine, day-to-day visits by agency occupational safety and health personnel, or routine workplace surveillance of occupational health conditions.

(l) The term "lost workday cases" means injuries and illnesses which involve days away from work and/or days of restricted work activity. "Lost workdays—away from work" means the number of workdays (consecutive or not) during which the employee would have worked but could not because of an occupational injury or illness. "Lost workdays—restricted work activity" means the number of workdays (consecutive or not) during which, because of injury or illness:

(1) The employee was assigned to another job on a temporary basis;

(2) The employee worked at a permanent job less than full time; or

(3) The employee worked at a permanently assigned job but could not perform all duties normally connected with the job.

(m) The term "representative of management" means a supervisor or management official as defined in the applicable labor-management relations program covering the affected employees.

(n) The term "medical treatment" includes treatment administered by a physician, or by licensed or registered professional personnel under standing orders of a physician, for an occupational injury or illness which does not result in days away from work or days of restricted work activity. "Medical treatment" does not include first aid treatment, even though provided by a physician or licensed or registered professional personnel. For further details and specific examples of what is considered first aid treatment versus medical treatment,see OSHA 2014, Recordkeeping and Reporting Guidelines for Federal Agencies.

(o) The term "recordable occupational injuries or illness" means any occupational injuries or illnesses which result in:

(1) Occupation-related deaths regardless of the time between injury and death, or the length of illness;

(2) Nonfatal occupational illnesses; or

(3) Nonfatal occupational injuries which involve one or more of the following: days away from work or days of restricted work activity; loss of consciousness; restriction of work or motion; transfer to another job; or medical treatment.

(p) The term "reporting unit" means an establishment, except as otherwise agreed between the agency and the Office of Federal Agency Safety and Health Programs, U.S. Department of Labor, as provided in § 1960.74.

(q) The term "Safety and Health Inspector" means a safety and/or occupational health specialist or other person authorized pursuant to Executive Order 12196, section 1-201(g), to carry out inspections for the purpose of Subpart D of this part, a person having equipment and competence to recognize safety and/or health hazards in the workplace.

(r) The term "Safety and Health Official" means an individual who manages the occupational safety and/or organizational health program at organizational levels below the Designated Agency Safety and Health Official.

(s) The term "Safety and Health Specialist" means a person or persons meeting the Office of

Personnel Management standards for such occupations, which include but are not limited to:

Safety Manager/Specialist GS-018
Safety Engineer GS-803
Fire Protection Engineer GS-804
Industrial Hygienist GS-690
Fire Protection Specialist/Marshal GS-081
Health Physicist GS-1306
Occupational Medicine Physician GS-602
Occupational Health Nurse GS-610
Safety Technician GS-019
Physical Science Technician GS-1311
Environmental Health Technician GS-699
Air Safety Investigation Officer GS-1815
Aviation Safety Specialist GS-1825
Chemist GS-1320
Health Technician GS-645
Highway Safety Manager GS-2125

or equally qualified military, agency, or nongovernment personnel. The agency head shall be responsible for determination and certification of equally qualified personnel.

(t) The term "workplace" means a physical location where the agency's work or operations are performed.

(u) The term "imminent danger" means any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures.

(v) The word "serious" as used in "serious hazard," "serious violation" or "serious condition" means a hazard, violation or condition such that there is a substantial probability that death or serious physical harm could result.

(w) The term "certified safety and health committee" means an agency safety and health committee that meets the provisions of section 1-3 of Executive Order 12196 and of this part, as listed and attested to by the head of each agency in writing to the Secretary.

(x) The term "reprisal" as used in this part means any act of restraint, interference, coercion or discrimination against an employee for exercising his or her rights under Executive Order 12196 and this part, or for participating in the agency's safety and health program.

1960.3–1960.5—(Reserved)

SUBPART B—ADMINISTRATION

1960.6—DESIGNATION OF AGENCY SAFETY AND HEALTH OFFICIALS

(a) The head of each agency shall designate an official with sufficient authority and responsibility to represent effectively the interest and support of the agency head in the management and administration of the agency occupational safety and health program. This Designated Agency Safety and Health Official should be of the rank of Assistant Secretary, or of equivalent rank, or equivalent degree of responsibility, and shall have sufficient headquarters staff with the necessary training and experience. The headquarters staff should report directly to, or have appropriate access to, the Designated Agency Safety and Health Official, in order to carry out the responsibilities under this part.

(b) The Designated Agency Safety and Health Official shall assist the agency head in establishing:

(1) An agency occupational safety and health policy and program to carry out the provisions

of section 19 of the Act, Executive Order 12196, and this part;

(2) An organization, including provision for the designation of safety and health officials at appropriate levels, with adequate budgets and staffs to implement the occupational safety and health program at all operational levels;

(3) A set of procedures that ensures effective implementation of the agency policy and program as required by section 19 of the Act, Executive Order 12196, and the program elements of this part, considering the mission, size, and organization of the agency;

(4) Goals and objectives for reducing and eliminating occupational accidents, injuries, and illnesses;

(5) Plans and procedures for evaluating the agency's occupational safety and health program effectiveness at all operational levels; and

(6) Priorities with respect to the factors which cause occupational accidents, injuries, and illnesses in the agency's workplaces so that appropriate corrective actions can be taken.

(c) The agency head shall assure that safety and health officials are designated at each appropriate level with sufficient authority and responsibility to plan for and assure funds for necessary safety and health staff, equipment, materials, and training required to ensure implementation of an effective occupational safety and health program.

1960.7—FINANCIAL MANAGEMENT

(a) The head of each agency shall ensure that the agency budget submission includes appropriate financial and other resources to effectively implement and administer the agency's occupational safety and health program.

(b) The Designated Agency Safety and Health Official, management officials in charge of each establishment, safety and health officials at all appropriate levels, and other management officials shall be responsible for planning, requesting resources, implementing, and evaluating the occupational safety and health program budget in accordance with the regulations of the Office of Management and Budget Circular A-11 (sections 13.2(f) and 13.5(f) and other relevant documents.

(c) Appropriate resources for an agency's occupational safety and health program shall include, but not be limited to:

(1) Sufficient personnel to implement and administer the program at all levels, including necessary administrative costs such as training, travel, and personal protective equipment;

(2) Abatement of unsafe or unhealthful working conditions related to agency operations or facilities;

(3) Safety and health sampling, testing, and diagnostic and analytical tools and equipment, including laboratory analyses;

(4) Any necessary contracts to identify, analyze, or evaluate unsafe or unhealthful working conditions and operations;

(5) Program promotional costs such as publications, posters, or films;

(6) Technical information, documents, books, standards, codes, periodicals, and publications; and

(7) Medical surveillance programs for employees.

1960.8—AGENCY RESPONSIBILITIES

(a) The head of each agency shall furnish to each employee employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.

(b) The head of each agency shall comply with the Occupational Safety and Health Administration standards applicable to the agency.

(c) The head of each agency shall develop, implement, and evaluate an occupational safety and health program in accordance with the requirements of section 19 of the Act, Executive Order 12196, and the basic program elements prescribed in this part, or approved alternate program elements.

(d) The head of each agency shall acquire, maintain, and require the use of approved personal protective equipment, approved safety equipment, and other devices necessary to protect employees.

(e) In order to provide essential specialized expertise, agency heads shall authorize safety and health personnel to utilize such expertise from whatever source available, including but not limited to other agencies, professional groups, consultants, universities, labor organizations, and safety and health committees.

1960.9—Supervisory responsibilities

Employees who exercise supervisory functions shall, to the extent of their authority, furnish employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm. They shall also comply with the occupational safety and health standards applicable to their agency and with all rules, regulations, and orders issued by the head of the agency with respect to the agency occupational safety and health program.

1960.10—Employee responsibilities and rights

(a) Each employee shall comply with the standards, rules, regulations, and orders issued by his/her agency in accordance with section 19 of the Act, Executive Order 12196, and this part which are applicable to his/her own actions and conduct.

(b) Employees shall use safety equipment, personal protective equipment, and other devices and procedures provided or directed by the agency and necessary for their protection.

(c) Employees shall have the right to report unsafe and unhealthful working conditions to appropriate officials.

(d) Employees shall be authorized official time to participate in the activities provided for in section 19 of the Act, Executive Order 12196, this part, and the agency occupational safety and health program.

1960.11—Evaluation of occupational safety and health performance

Each agency head shall ensure that any performance evaluation of any management official in charge of an establishment, any supervisory employee, or other appropriate management official, measures that employee's performance in meeting requirements of the agency occupational safety and health program, consistent with the employee's assigned responsibilities and authority, and taking into consideration any applicable regulations of the Office of Personnel Management or other appropriate authority. The recognition of superior performance in discharging safety and health responsibilities by an individual or group should be encouraged and noted.

1960.12—Dissemination of occupational safety and health program information

(a) Copies of the Act, Executive Order 12196, program elements published in this part, details of the agency's occupational safety and health program, and applicable safety and health standards shall be made available upon request to employees or employee representatives for review.

(b) A copy of the agency's written occupational safety and health program applicable to the establishment shall be made available to each supervisor, each occupational safety and health committee member, and to employee representatives.

(c) Each agency shall post conspicuously in each establishment, and keep posted, a poster informing employees of the provisions of the Act, Executive Order 12196, and the agency occupational safety and health program under this part. The Department of Labor will furnish the core text of a poster to agencies. Each agency shall add the following items:

(1) Details of the agency's procedures for responding to reports by employees of unsafe or unhealthful working conditions, and to allegations of discrimination or reprisal due to participation in safety and/or health activities;

(2) the location where employees may obtain information about the agency's occupational safety and health program, including the full text of agency occupational safety and health standards, and

(3) relevant information about any agency safety and health committees. Such posters and additions shall not be altered, defaced, or covered by other material.

(d) A copy of the agency's poster shall be provided to the Secretary. If the agency needs assistance and advice on the content and development of the poster, such shall be requested of the Secretary prior to printing and distribution.

(e) Agency heads shall promote employee awareness of occupational safety and health matters through their ordinary information channels, such as newsletters, bulletins and handbooks.

1960.13-1960.15 (RESERVED)

SUBPART C—STANDARDS

1960.16—COMPLIANCE WITH OSHA STANDARDS

Each agency head shall comply with all occupational safety and health standards issued under section 6 of the Act, or with alternate standards issued pursuant to this subpart. In complying with section 6 standards, an agency may, upon prior notification to the Secretary, prescribe and enforce more stringent permissible exposure levels or threshold limit values and may require more frequent monitoring of exposures without recourse to the approval procedures for alternate standards described in § 1960.17. In addition, after consultation with employees and safety and health committees and prior notification to the Secretary, an agency may utilize the latest edition of a reference standard if it is more stringent than the section 6 standard. After notification, the Secretary may require the use of the approval procedures for alternate standards for any of the situations described in this paragraph.

1960.17—ALTERNATE STANDARDS

An agency head may apply an alternate standard where deemed necessary, and shall, after consultation with employees or their representatives, including appropriate occupational safety and health committees, notify the Secretary and request approval of such alternate standards.

(a) Any request by the head of the agency for an alternate standard shall be transmitted to the Secretary.

(b) Any such request for an alternate standard shall not be approved by the Secretary unless it provides equivalent or greater protection for affected employees. Any such request shall include:

(1) A statement of why the agency cannot comply with the OSHA standard or wants to adopt an alternate standard;

(2) A description of the alternate standard;

(3) An explanation of how the alternate standard provides equivalent or greater protection for the affected employees;

(4) A description of interim protective measures afforded employees until a decision is rendered by the Secretary of Labor; and

(5) A summary of written comments, if any, from interested employees, employee representatives, and occupational safety and health committees.

1960.18—SUPPLEMENTARY STANDARDS

(a) In addition to complying with emergency temporary standards issued under section 6 of the Act, an agency head shall adopt such emergency temporary and permanent supplementary standards as necessary and appropriate for application to working conditions of agency employees for which there exists no appropriate OSHA standards. In order to avoid any possible duplication of effort, the agency head should notify the Secretary of the subject matter of such standard when the development of the standard begins.

(b) The agency head shall send a copy of the final draft of the permanent supplementary standard to the Secretary prior to official adoption by the agency, along with any written comments on the standard from interested employees, employee representatives, and occupational safety and health committees. If the Secretary finds the permanent supplementray standard to be adopted inconsistent with OSHA standards, or inconsistent with OSHA enforcement practices under section 5(a)(1) of the Act, the Secretary shall have 15 working days in which to notify the head of the agency of this finding. In such a case, the supplementary standard shall not be adopted, but the agency will be afforded an opportunity to resubmit a revised standard that is designed to provide adequate protection and is consistent with OSHA standards. Upon request of the agency head, the Secretary shall offer to the agency technical assistance in the development of the supplemental standard.

1960.19—OTHER FEDERAL AGENCY STANDARDS AFFECTING OCCUPATIONAL SAFETY AND HEALTH

(a) Where employees of different agencies engage in joint operations, and/or primarily report to work or carry out operations in the same establishment, the standards adopted under § 1960.17 or § 1960.18 of the host agency shall govern.

(b) There are situations in which the head of an agency is required to comply with standards affecting occupational safety and health issued by a Federal agency other than OSHA. For example, standards issued by the Federal Aviation Administration, the Department of Energy, or the General Services Administration may be applicable to certain Federal workplaces. Nothing in this subpart affects the duty of any agency head to comply with such standards. In addition, agency heads should comply with other standards issued by Federal agencies which deal with hazardous working conditions, but for which OSHA has no standards.

(c) Although it is not anticipated that standards of other Federal agencies will conflict with OSHA standards, should such conflict occur, the head of the agency shall inform the other Federal agency and the Secretary so that joint efforts to resolve the issues may be undertaken. However, until conflicts are resolved, agencies shall comply with the more protective of the conflicting standards.

1960.20–1960.24 (RESERVED)

SUBPART D—INSPECTION AND ABATEMENT

1960.25 QUALIFICATIONS OF SAFETY AND HEALTH INSPECTORS AND AGENCY INSPECTIONS

(a) Executive Order 12196 requires that each agency utilize as inspectors "personnel with equipment and competence to recognize hazards." Inspections shall be conducted by inspectors qualified to recognize and evaluate hazards of the working environment and to suggest general abatement procedures. Safety and health specialists as defined in § 1960.2(s), with experience and/or up-to-date training in occupational safety and health hazard recognition and evaluation are considered as meeting the qualifications of safety and health inspectors. For those working environments where there are less complex hazards, such safety and health specializations as cited above may not be required, but inspectors in such environments shall have sufficient documented training and/or experience in the safety and health hazards of the workplace involved to recognize and evaluate those particular hazards and to suggest general abatement procedures. All inspection personnel must be provided the equipment necessary to conduct a thorough inspection of the workplace involved.

(b) Each agency which has workplaces containing information classified in the interest of national security shall provide access to safety and health inspectors who have obtained the appropriate security clearance.

(c) All areas and operations of each workplace, including office operations, shall be inspected at least annually. More frequent inspections shall be conducted in all workplaces where there is an increased risk of accident, injury, or illness due to the nature of the work performed. Sufficient unannounced inspections and unannounced follow-up inspections should be conducted by the agency to ensure the identification and abatement of hazardous conditions.

(d) When situations arise involving multiple agencies' responsibilities for conditions affecting employee safety and health, coordination of inspection functions is encouraged.

1960.26—CONDUCT OF INSPECTIONS

(a) Preparation.

(1) Prior to commencement of the inspection, the Safety and Health Inspector shall be provided all available relevant information which pertains to the occupational safety and health of the workplace to be inspected, including safety and health hazard reports, injury and illness records, previous inspection reports, and reports of unsafe and unhealthful working conditions.

(2) The Safety and Health Inspector shall determine in advance, where possible, the actual work procedures and conditions to be inspected, in order to have the proper equipment available to conduct an effective inspection.

(b) Inspection.

(1) For the purpose of assuring safe and healthful working conditions for employees of agencies, the head of the agency shall authorize safety and/or health inspectors: To enter without delay, and at reasonable times, any building, installation, facility, construction site, or other area, workplace, or environment where work is performed by employees of the agency; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any agency employee, and/or any agency supervisory employee, and/or any official in charge of an establishment.

(2) If there are no authorized representatives of employees, the inspector shall consult with a reasonable number of employees during the walkaround.

(3) When, in the opinion of the inspector, it is necessary to conduct personal monitoring (sampling) of employee's work environments, the inspector may request employees to wear reasonable and necessary personal monitoring devices, e.g., noise dosimeters and air sampling pumps, for periods determined by the inspector to be necessary for complete and effective sampling of the environment.

(4) Upon request of the inspector, the employer shall encourage employees to wear the personal environmental monitoring devices during an inspection.

(5) Whenever and as soon as it is concluded on the basis of an inspection that a danger exists which could reasonably be expected to cause death or serious physical harm immediately, the inspector shall inform the affected employees and official in charge of the workplace of the danger. The official in charge of the workplace, or a person empowered to act for that official, shall undertake immediate abatement and the withdrawal of employees who are not necessary for abatement of the dangerous conditions. In the event the offical in charge of the workplace needs assistance to undertake full abatement, that official shall promptly contact the Designated Agency Safety and Health Official and other responsible agency officials, who shall assist the abatement effort. Safety and health committees shall be informed of all relevant actions and representatives of the employees shall be so informed.

(6) At the conclusion of an inspection, the Safety and Health Inspector shall confer with the official in charge of the workplace or that official's representative, and with an appropriate representative of the employees of the establishment, and informally advise them of any apparent unsafe or unhealthful working conditions disclosed by the inspection. During

any such conference, the official in charge of the workplace and the employee representative shall be afforded an opportunity to bring to the attention of the Safety and Health Inspector any pertinent information regarding conditions in the workplace.

(c) Written reports and notices of unsafe or unhealthful working conditions.

(1) The inspector shall, in writing, describe with particularity the procedures followed in the inspection and the findings which form the basis for the issuance of any Notice of Unsafe or Unhealthful Working Conditions.

(2) Each agency shall establish a procedure for the prompt issuance of a Notice of Unsafe or Unhealthful Working Conditions. Such notices shall be issued not later than 15 days after completion of the inspections for safety violations or not later than 30 days for health violations. If there are compelling reasons why such notice cannot be issued within the 15 days or 30 days indicated, the persons described in paragraph (c)(1)(iii) of this section shall be informed of the reasons for the delay. Such procedures shall include the following:

(i) Notices shall be in writing and shall describe with particularity the nature and degree of seriousness of the unsafe or unhealthful working condition, including a reference to the standard or other requirement involved;

(ii) the notice shall fix a reasonable time for the abatement of the unsafe or unhealthful working condition; and

(iii) a copy of the notice shall be sent to the official in charge of the workplace, the employee representative who participated in the closing conference, and/or the safety and health committee of the workplace, if any.

(3) Upon receipt of any notice of an unsafe or unhealthful working condition, the official in charge of a workplace shall immediately post such notice, or copy thereof, unedited, except for reason of national security, at or near each place an unsafe or unhealthful working condition referred to in the notice exists or existed. In addition, a notice shall be posted if any special procedures are in effect. Where, because of the nature of the workplace operations, it is not practicable to post the notice at or near each such place, such notice shall be posted, unedited, except for reason of national security, in a prominent place where it will be readily observable by all affected employees. For example, where workplace activities are physically dispersed, the notice may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the notice may be posted at the location from which the employees operate to carry out their activities.

(4) Each notice of an unsafe or unhealthful working condition, or a copy thereof, shall remain posted until the unsafe or unhealthful working condition has been abated or for 3 working days whichever is later. A copy of the notice will be filed and maintained for a period of five years after abatement at the establishment and made available to the Secretary upon request.

1960.27—REPRESENTATIVES OF OFFICIALS IN CHARGE AND REPRESENTATIVES OF EMPLOYEES

(a) Safety and health inspectors shall be in charge of inspections and may interview any employee in private if the inspector deems it necessary. A representative of the official in charge of a workplace and a representative of employees shall be given an opportunity to accompany Safety and Health Inspectors during the physical inspection of any workplace, both to aid the inspection and to provide such representatives with more detailed knowledge of any existing or potential unsafe or unhealthful working condition. The representative of employees shall be selected by the employees. Additional representatives of the official in charge and additional representatives of employees may accompany the Safety and Health Inspectors if it is determined by the inspector that such additional representatives will further aid the inspection. Different representatives of the employer and employees may be allowed to accompany the Inspector during each different phase of an inspection.

(b) Safety and health inspectors shall be authorized to deny the right of accompaniment under this section to any person whose participation interferes with a fair and orderly inspection.

(c) With regard to facilities classified in the interest of national security, only persons authorized to have access to such facilities shall be allowed to accompany a Safety and Health Inspector in such areas.

(d) Safety and health inspectors shall consult with employees concerning matters of occupational safety and health to the extent deemed necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring to the attention of the Safety and Health Inspector any unsafe or unhealthful working condition which the employee has reason to believe exists in the workplace.

1960.28—EMPLOYEE REPORTS OF UNSAFE OR UNHEALTHFUL WORKING CONDITIONS

(a) The purpose of employee reports is to inform agencies of the existence of, or potential for, unsafe or unhealthful working conditions. A report under this part is not a grievance.

(b) This section provides guidance in establishing a channel of communication between agency employees and those with responsibilities for safety and health matters, e.g., their supervisor, the agency safety and health officials, safety and health committees, safety and health inspectors, the head of the agency, or the Secretary. These channels of communication are intended to assure prompt analysis and response to reports of unsafe or unhealthful working conditions in accordance with the requirements of Executive Order 12196. Since many safety and health problems can be eliminated as soon as they are identified, the existence of a formal channel of communication shall not prelude immediate corrective action by an employee's supervisor in response to oral reports of unsafe or unhealthful working conditions where such action is possible. Nor should an employee be required to await the outcome of such an oral report before filing a written report pursuant to the provisions of this section.

(c) Any employee or representative of employees, who believes that an unsafe or unhealthful working condition exists in any workplace where such employee is employed, shall have the right and is encouraged to make a report of the unsafe or unhealthful working condition to an appropriate agency safety and health official and request an inspection of such workplace for this purpose. The report shall be reduced to writing either by the individual submitting the report or, in the case of an oral notification, by the above official or other person designated to receive the reports in the workplace. Any such report shall set forth grounds for the report and shall contain the name of the employee or representative of employees. Upon the request of the individual making such report, no person shall disclose the name of the individual making the report or the names of individual employees referred to in the report, to anyone other than authorized representatives of the Secretary. In the case of imminent danger situations, employees shall make reports by the most expeditious means available.

(d) **Reports received by the agency.**

(1) Each report of an existing or potential unsafe or unhealthful working condition should be recorded on a log maintained at the establishment. If an agency finds it inappropriate to maintain a log of written reports at the establishment level, it may avail itself of procedures set forth in § 1960.71. A copy of each report received shall be sent to the appropriate establishment safety and health committee.

(2) A sequentially numbered case file, coded for identification, should be assigned for purposes of maintaining an accurate record of the

report and the response thereto. As a minimum, each establishment's log should contain the following information: date, time, code/reference/file number, location of condition, brief description of the condition, classification (imminent danger, serious or other), and date and nature of action taken.

(3) Executive Order 12196 requires that agency inspections be conducted within 24 hours for employee reports of imminent danger conditions, within three working days for potentially serious conditions, and within 20 working days for other than serious safety and health conditions. However, an inspection may not be necessary if, through normal management action and with prompt notification to employees and safety and health committees, the hazardous condition(s) identified can be abated immediately.

(4) An employee submitting a report of unsafe or unhealthful conditions shall be notified in writing within 15 days if the official receiving the report determines there are not reasonable grounds to believe such a hazard exists and does not plan to make an inspection based on such report. A copy of each such notification shall be provided by the agency to the appropriate certified safety and health committee, where established under Executive Order 12196. An agency's inspection or investigation report, if any, shall be made available to the employee making the report within 15 days after completion of the inspection, for safety violations or within 30 days for health violations, unless there are compelling reasons, and shall be made available to the Secretary or the Secretary's authorized representative on request.

(e) Reports received by the Secretary of Labor.

(1) Agency safety and health programs must have provisions for responding to employees' reports of unsafe or unhealthful working conditions and the Secretary encourages employees to use agency procedures as the most expeditious means of achieving abatement of hazardous conditions. It is recognized, however, that employee reports may be received directly by the Secretary.

(2) When such reports are received directly from an employee or employee representative, the Secretary shall, where a certified safety and health committee exists, forward the report to the agency for handling in accordance with procedures outlined in § 1960.28(d). A copy of the response to the originator shall be sent to the Secretary.

(3) Where there is no certified safety and health committee, or when requested by half the members of a committee, the Secretary may initiate an inspection or other appropriate action. When the Secretary determines that an inspection is warranted, the Secretary shall observe the same response times as required of the agencies under the Executive Order and § 1960.28(d)(3). When the Secretary determines not to make an inspection, the report shall be forwarded to the agency for handling in accordance with procedures outlined in § 1960.28(d). A copy of the response to the originator shall be sent to the Secretary.

1960.29—ACCIDENT INVESTIGATION

(a) While all accidents should be investigated, including accidents involving property damage only, the extent of such investigation shall be reflective of the seriousness of the accident.

(b) In any case, each accident which results in a fatality or the hospitalization of five or more employees shall be investigated to determine the causal factors involved. Except to the extent necessary to protect employees and the public, evidence at the scene of an accident shall be left untouched until inspectors have an opportunity to examine it.

(c) Any information or evidence uncovered during accident investigations which would be of benefit in developing a new OSHA standard or in modifying or revoking an existing standard should be promptly transmitted to the Secretary.

(d) The investigative report of the accident shall include appropriate documentation on date, time, location, description of operations, description of accident, photographs, interviews of employees and witnesses, measurements, and other pertinent information. A copy of the investigative report required by this section shall be forwarded to the official in charge of the workplace, the appropriate safety and health committee, and the exclusive employee representative, if any. The investigative report shall be made available to the Secretary or his authorized representative on request.

1960.30—ABATEMENT OF UNSAFE OR UNHEALTHFUL WORKING CONDITIONS

(a) The agency shall ensure the prompt abatement of unsafe and unhealthful conditions. Where a Notice of an Unsafe or Unhealthful Working Condition has been issued, abatement shall be within the time set forth in the notice, or in accordance with the established abatement plan.

(b) The procedures for correcting unsafe or unhealthful working conditions shall include a follow-up, to the extent necessary, to determine whether the correction was made. If, upon the follow-up, it appears that the correction was not made, or was not carried out in accordance with an abatement plan prepared pursuant to paragraph (c) of this section, the official in charge of the establishment and the appropriate safety and health committee shall be notified of the failure to abate.

(c) The official in charge of the establishment shall promptly prepare an abatement plan with the appropriate participation of the establishment's Safety and Health Official or a designee, if in the judgment of the establishment official the abatement of an unsafe or unhealthful working condition will not be possible within 30 calendar days. Such plan shall contain an explanation of the circumstances of the delay in abatement, a proposed timetable for the abatement, and a summary of steps being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthful working condition. A copy of the plan shall be sent to the safety and health committee, and, if no committee exists, to the representative of the employees. Any changes in an abatement plan will require the preparation of a new plan in accordance with the provisions of this section.

(d) When a hazard cannot be abated within the authority and resources of the official in charge of the establishment, that official shall request assistance from appropriate higher authority. The local safety and health official, any established committee and/or employee representatives, and all personnel subject to the hazard shall be advised of this action and of interim protective measures in effect, and shall be kept informed of subsequent progress on the abatement plan.

(e) When a hazard cannot be abated without asistance of the General Services Administration or other Federal lessor agency, the occupant agency shall act with the lessor agency to secure abatement. Procedure for coordination with the General Services Administration are contained in Subpart E of this part.

1960.31—Inspections by OSHA

(a) The Secretary or the Secretary's representatives are authorized to conduct, when the Secretary deems necessary, announced or unannounced inspections in the following situations:

(1) Where an agency has not established occupational safety and health committees or where committees no longer operate in conformance to the requirements of subpart F of this part;

(2) In response to a request from half the membership of record of any certified safety

and health committee; and

(3) In response to an employee's report on an imminent danger situation, where there is a certified committee, but where the Secretary determines that neither the agency nor the committee has responded to the employee.

(b) The Secretary's inspectors or evaluators are authorized: to enter without delay, and at reasonable times, any building, installation, facility, construction site, or other area, workplace, or environment where work is performed by employees of the agency; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any employee, any supervisory employee, and/or any official in charge of an establishment.

(c) The Secretary may also make scheduled inspections as an integral part of OSHA's evaluation of an agency's safety and health program in accordance with Subpart J of this part.

(d) OSHA inspections shall follow the general format set forth for agency inspections in other applicable parts of this subpart.

1960.32-1960.33 (RESERVED)

SUBPART E—GENERAL SERVICES ADMINISTRATION AND OTHER FEDERAL AGENCIES

1960.34—GENERAL PROVISIONS

Within six months of the effective date of this part, the Secretary of Labor and the Administrator of the General Services Administration (GSA) shall initiate a study of conflicts that may exist in their standards concerning Federal buildings, leased space, products purchased or supplied, and other requirements affecting Federal employee safety and health. Both agencies shall establish and publish a joint procedure for resolving conflicting standards. All other Federal agencies that have authority for purchasing equipment, supplies, and materials, and for controlling Government space, as well as the leasing of space, shall also be subject to the requirements of this subpart, including publication of a procedure for resolving conflicting standards.

(a) In order to assist agencies in carrying out their duties under section 19 of the Act, Executive Order 12196, and this part, the Administrator or the Administrator's designee shall:

(1) Upon an agency's request, furnish for any owned or leased space offered to a Federal agency for occupancy:

(i) a report of a recent pre-occupancy inspection to identify serious hazards or serious violations of OSHA standards or approved alternate standards, and

(ii) a plan for abatement of the hazards and violations discovered;

(2) Provide space which:

(i) meets any special safety and health requirements submitted by the requesting agency, and

(ii) does not contain either serious hazards or serious violations of OSHA standards or approved alternate standards which cannot be abated;

(3) Repair, renovate, or alter, upon an agency's request, owned or leased space in a planned and controlled manner to reduce or eliminate, whenever possible, any hazardous exposure to the occupant agency's employees;

(4) Accompany, upon request, the Secretary or the Secretary's designee on any inspection or investigation of a facility subject to the authority of the General Services Administration. Requests made for this purpose shall, whenever possible, be made at the GSA regional level in order to facilitate prompt assistance;

(5) Investigate, upon an official agency request, reports of unsafe or unhealthful conditions within the scope of GSA's responsibility. Such investigation, when requiring an on-site inspection, shall be completed within 24 hours for imminent danger situations, within three working days for potentially serious conditions, and within 20 working days for other safety and health risk conditions;

(6) Abate unsafe or unhealthful conditions disclosed by reports, investigation or inspection within 30 calendar days or submit to the occupant agency's designated liaison official an abatement plan. Such abatement plan shall give priority to the allocation of resources to bring about prompt abatement of the conditions. (GSA shall publish procedures for abatement of hazards in the Federal Property Management Regulations—41 CFR Part 101);

(7) Establish an occupancy permit program which will regulate the types of activities and occupancies in facilities in order to avoid incompatible groupings, e.g., chemincal or biological laboratories in office space. GSA shall seek to consolidate Federal laboratory operations in facilities designed for such purposes;

(8) Ensure, insofar as possible, that agency safety and health problems still outstanding are resolved, or otherwise answered by acceptable alternatives prior to renegotiation of leases; and

(9) Ensure that GSA or other Federal lessor agencies' building managers maintain a log of report of unsafe or unhealthful conditions submitted by tenants to include: date of receipt of report, action taken, and final resolution.

(b) **Product safety.** Agencies such as GSA, DOD, and others which procure and provide supplies, equipment, devices, and material for their own use or use by other agencies, except for the design of uniquely military products as set forth in § 1960.2(i), shall establish and maintain a product safety program which:

(1) Ensures that items procured will allow user agencies to use such products safely for their designed purpose and will facilitate user compliance with all applicable standards.

(2) Requires that products meet the applicable safety and health requirements of Federal law and regulations issued thereunder;

(3) Ensures that hazardous material will be labeled in accordance with current law or regulation to alert users, shippers, occupational safety and health, and emergency action personnel, and others, to basic information concerning flammability, toxicity, compatibility, first aid procedures, and normal as well as emergency handling and disposal procedures;

(4) Ensures availablity of appropriate safety rescue and personal protective equipment to supply user agencies. The writing of Federal procurement specifications will be coordinated by GSA with OSHA/NIOSH as needed to assure purchase of approved products;

(5) Ensures that products recalled by the manufacturer, either voluntarily or by order from a regulatory authority, are removed from inventory. Each recall notice or order shall be forwarded to all agencies which have ordered such product from or through the procuring/-supplying Federal agency, e.g., GSA, DOD, etc,;

(6) Include preparation of FEDSTD 313, Material Safety Data Sheets (MSDS), involving all interested agencies in review to keep the standard current. MSDS provided by agencies or contractors shall meet the requirments of FEDSTD 313 and be furnished to DOD for filing and distribution.

(c) In order to assist agencies in carrying out their duties under section 19 of the Act, Executive Order 12196, and this part, the DOD operates and maintains an automated system to receive, file, reproduce, and make available MSDS data to other Federal agencies through the Government Printing Office or the National Technical Information Services.

(d) All Federal agencies shall use MSDS either provided by DOD, or acquired directly from suppliers, when purchasing hazardous materials (as defined in FEDSTD 313) for local use. These data will be used to develop detailed procudures to advise employees in the workplace of the hazards involved with the materials and to protect them therefrom.

(e) **Safety and health services.** GSA will operate and maintain for user agencies the following services:

(1) Listings in the "Federal Supply Schedule" of safety and health services and equipment which are approved for use by agencies when needed. Examples of such services are: workplace inspections, training, industrial hygiene surveys, asbestos bulk sampling, and mobile health testing; examples of such equipment are: personal protective equipment and apparel, safety devices, and environmental monitoring equipment;

(2) Rules for assistance in the preparation of agency "Occupant Emergency Plans" (formerly called "Facility Self-Protection Plans"), to be published by GSA at 41 CFR Part 101;

(3) An effective maintenance program in the Interagency Motorpool System which will ensure the safety and health of Federal employees utilizing the vehicles. Critical items to be included are: Exhaust systems, brakes, tires, lights, steering, and passenger restraint or other crash protection systems; and

(4) A rapid response system whereby agencies can alert GSA to unsafe or unhealthful items purchased or contracted for by GSA, which in turn will evaluate the reports, initiate corrective action, as appropriate, and advise use agencies of interim protective measures.

1960.35—NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

(a) The Director of the National Institute for Occupational Safety and Health (NOISH) shall, upon request by the Secretary, assist in: (1) Evaluations of Federal agency safety and health programs; (2) investigations of possible safety and health hazards and (3) inspections resulting from employee or committee reports of unsafe or unhealthful working conditions.

(b) The Director of NIOSH shall provide a Hazard Evaluation (HE) program for Federal agencies. This program shall be designed to respond to requests for assistance in determining whether or not safety or health hazards are present in a Federal Workplace. Requests for such Hazard Evaluations may be submitted to the Director by:

(1) The Secretary of Labor;

(2) The Head of a Federal agency;

(3) An agency safety and health committee if half the committee requests such service; and

(4) Employees who are not covered by a certified safety and health committee.

(c) The Director of NIOSH may assist agencies by providing hazard alerts, technical services, training materials and conducting training programs upon request by an agency and with reimbursement.

SUBPART F—OCCUPATIONAL SAFETY AND HEALTH COMMITTEES

1960.36—GENERAL PROVISIONS

(a) The occupational safety and health committees described in this subpart are organized and maintained basically to monitor and assist an agency's safety and health program. These committees assist agencies to maintain an open channel of communication between employees and management concerning safety and health matters in agency workplaces. The committes provide a method by which employees can utilize their knowledge of workplace operations to assist agency management to improve policies, conditions, and practices.

(b) Agencies may elect to establish safety and health committees meeting the minimum requirements contained in this subpart. Where such committees are not established or fail to meet the minimum requirements established by the Secretary, the Secretary is authorized by section 1-401(i) of Executive Order 12196 to conduct unannounced inspections of agency workplaces when the Secretary determines them necessary.

1960.37—COMMITTEE ORGANIZATION

(a) For agencies which elect to utilize committee concept, safety and health committees shall be formed at both the national level and, for agencies with field or regional offices, at appropriate levels within the agency. To realize exemption from unannounced OSHA inspections, an agency must form a committee at the national level and at any establishment of grouping of establishments that is to be exempt, keeping the Secretary advised of the locations and activities where such committees are functioning.

(1) The principal function of the national level committee shall be to consult and provide policy advice on and monitor the performance of, the agency-wide safety and health program.

(2) Committees at other appropriate levels shall be established at agency establishments or groupings of establishments consistent with the mission, size and organization of the agency and its collective bargaining configuration. The agency shall form committees at the lowest practicable local level. The principal function of the establishment (or local) committees is to monitor and assist in the execution of the agency's safety and health policies and program at the workplaces within their jurisdiction. Any dispute over the meaning of the term "appropriate levels" shall be resolved by the Secretary.

(b) Committees shall have equal representation of management and nonmanagement employees, who shall be members of record.

(1) Management members of both national level and establishment level committees shall be appointed in writing by the person empowered to make such appointments.

(2) Nonmanagement members of establishment level committees shall represent all employees of the establishment and shall be determined according to the following rules:

(i) Where employees are represented under collective bargaining arrangements, members shall be appointed from among those recommended by the exclusive bargaining representative;

(ii) Where employees are not represented under collective bargaining arrangements, members shall be determined through procedures devised by the agency which provide for effective representation of all employees; and

(iii) Where some employees of an establishment are covered under collective bargaining arrangements and others are not, members shall be representative of both groups.

(3) Nonmanagement members of national level committees shall be determined according to the following rules:

(i) Where employees are represented by organizations having exclusive recognition on an agency basis or by organizations having national consultation rights, some members shall be determined in accordance with the terms of collective bargaining agreements and some members shall be selected from those organizations having consultation rights, and

(ii) Where employees are not represented by organizations meeting the criteria of paragraph (b)(3)(i) of this section, members shall be determined through procedures devised by the agency which provide for effective representation of all employees.

(c) Committee members should serve overlapping terms. Such terms should be of at least two years duration, except when the committee is initially organized.

(d) The committee chairperson shall be nominated from among the committee's members and shall be elected by the committee members. Management and nonmanagement members should alternate in this position. Maximum service time as chairperson should be two consecutive years.

(e) Committees shall establish a regular schedule of meetings and special meetings shall be held as necessary; establishment level committees shall meet at least quarterly and national committees shall meet at least annually.

(f) Adequate advance notice of committee meetings shall be furnished to employees and each meeting shall be conducted pursuant to a prepared agenda.

(g) Written minutes of each committee meeting shall be maintained and distributed to each committee member, and upon request, shall be made available to employees and to the Secretary.

1960.38—COMMITTEE FORMATION

(a) Upon forming such committees, heads of agencies shall submit information to the Secretary concerning the existence, location, and coverage, in terms of establishments and populations, of such committees, certifying to the Secretary that such committees meet the requirements of this subpart. The information submitted should include the name and telephone numbers of the chairperson of each committee, and should be updated annually as part of the annual report required by § 1960.75 to reflect any changes that may have occurred.

(b) If, upon evaluation, the Secretary determines that the operations of a committee do not meet the requirements of this subpart, the Secretary shall notify the agency and identify the deficiencies to be remedied. If the agency does not satisfy the Secretary within 90 days that the committee meets the requirements of this subpart, the committee shall not be deemed a committee under Executive Order 12196 and this part.

1960.39—AGENCY RESPONSIBILITIES

(a) Agencies shall make available to committees all agency information relevant and necessary to their duties, except where prohibited by law. Examples of such information include, but are not limited to: The agency's safety and health policies and program; human and financial resources available to implement the program; accident, injury, and illness data; epidemiological data; employee exposure monitoring data; Material Safety Data Sheets; inspection reports; reprisal investigation reports; abatement plans; NIOSH hazard evaluation reports; and internal and external evaluation reports.

(b) Agencies shall provide all committee members appropriate training as required by subpart H of this part.

1960.40—ESTABLISHMENT COMMITTEE DUTIES

(a) The safety and health committee is an integral part of the safety and health program, and helps ensure effective implementation of the program at the establishment level.

(b) An establishment committee formed under this subpart shall, except where prohibited by law:

(1) Monitor and assist the safety and health program at establishments under its jurisdiction and make recommendations to the official in charge on the operation of the program;

(2) Monitor findings and reports of workplace inspections to confirm that appropriate corrective measures are implemented;

(3) When requested by the agency Safety and Health Offical, or when the committee deems it necessary for effective monitoring of agency establishment inspection procedures, participate in inspections of the establishment;

(4) Review internal and external evaluation reports and make recommendations concerning the establishment safety and health program;

(5) Review, and recommend changes, as appropriate, to procedures for handling safety and health suggestions and recommendations from employees;

(6) When requested by the Designated Agency Safety and Health Official, or when the committee deems it necessary, comment on standards proposed pursuant to the provisions of Subpart C of this part;

(7) Monitor and recommend changes, as required, in the level of resources allocated and spent on the establishment safety and health program;

(8) Review agency responses to reports of hazardous conditions, safety and health program deficiencies, and allegations of reprisal;

(9) Report their dissatisfaction to the Secretary if half a committee determines there are deficiencies in the establishment's safety and health program or is not satisfied with the agency's reports of reprisal investigations; and

(10) Request the Secretary to conduct an evaluation or inspection if half the members of record are not satisfied with an agency's response to a report of hazardous working conditions.

1960.41—NATIONAL COMMITTEE DUTIES

National committees established under this subpart shall, except where prohibited by law:

(a) Monitor performance of the agency safety and health program and make policy recommendations to the head of the agency on the operation of the program;

(b) Monitor and assist in the development and operation of the agency's establishment committees. As the committee deems appropriate, monitor and review: Reports of inspections; internal and external evaluation reports; agency safety and health training programs; proposed agency standards; agency plans for abating hazards; and responses to reports of hazardous conditions; safety and health program deficiencies; and allegations of reprisal;

(c) Monitor and recommend changes in the resources allocated to the entire agency safety and health program;

(d) Report their dissatisfaction to the Secretary if half a committee determines there are deficiencies in the agency's safety and health program or is not satisfied with the agency's reports of reprisal investigations; and

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(e) Request the Secretary to conduct an evaluation or inspection if half the members of record are not satisfied with an agency's response to a report of hazardous working conditions.

1960.42–1960.45 (RESERVED)

SUBPART G—ALLEGATIONS OF REPRISAL

1960.46—AGENCY RESPONSIBILITY

(a) The head of each agency shall establish procedures to assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in agency occupational safety and health program activities, or because of the exericse by such employee on behalf of himself or herself or others of any right afforded by section 19 of the Act, Executive Order 12196, or this part. These rights include, among other, the right of an employee to decline to perform his or her assigned task because of a reasonable belief that, under the circumstances the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures established in accordance with this part.

(b) Based on the Secretary's evaluation of agencies' procedures for protecting employees from reprisal, the Secretary shall report to the President by September 30, 1982 his findings and recommendations for improvements in procedures for the investigation and resolution of allegations of reprisal.

1960.47—RESULTS OF INVESTIGATIONS

Each agency shall keep occupational safety and health committees advised of agency activity regarding allegations of reprisal and any agency determinations thereof. Agency officials shall provide copies of reprisal investigation findings, if any, to the Secretary and to the appropriate safety and health committee.

1960.48–1960.53 (RESERVED)

SUBPART H—TRAINING

1960.54—TRAINING OF TOP MANAGEMENT OFFICIALS

Each agency shall provide top management officials with orientation and other learning experiences which will enable them to manage the occupational safety and health programs of their agencies. Such orientation should include coverage of section 19 of the Act, Executive Order 12196, the requirements of this part, and the agency safety and health program.

1960.55—TRAINING OF SUPERVISORS

(a) Each agency shall provide occupational safety and health training for supervisory employees that includes: supervisory responsibility for providing and maintaining safe and healthful working conditions for employees, the agency occupational safety and health program, section 19 of the Act, Executive Order 12196, this part, occupational safety and health standards applicable to the assigned workplaces, agency procedures for reporting hazards, agency procedures for reporting and investigating allegations of reprisal, and agency procedures for the abatement of hazards, as well as other appropriate rules and regulations.

(b) This supervisory training should include introductory and specialized courses and materials which will enable supervisors to recognize and eliminate, or reduce, occupational safety and health hazards in their working units. Such training shall also include the development of requisite skills in managing the agency's safety and health program within the work unit, including the training and motivation of subordinates toward assuring safe and healthful work practices.

1960.56—TRAINING OF SAFETY AND HEALTH SPECIALISTS

(a) Each agency shall provide occupational safety and health training for safety and health specialists through courses, laboratory experiences, field study, and other formal learning experiences to prepare them to perform the necessary technical monitoring, consulting, testing, inspecting, designing, and other tasks related to program development and implementation, as well as hazard recognition, evaluation and control, equipment and facility design, standards, analysis of accident, injury, and illness data, and other related tasks.

(b) Each agency shall implement career development programs for their occupational safety and health specialists to enable the staff to meet present and future program needs of the agency.

1960.57—TRAINING OF SAFETY AND HEALTH INSPECTORS

Each agency shall provide training for safety and health inspectors with respect to appropriate standards, and the use of appropriate equipment and testing procedures necessary to identify and evaluate hazards and suggest general abatement procedures during or following their assigned inspections, as well as preparation of reports and other documentation to support the inspection findings.

1960.58—TRAINING OF COLLATERAL DUTY SAFETY AND HEALTH PERSONNEL AND COMMITTEE MEMBERS

Within six months after October 1, 1980, or on appointment of an employee to a collateral duty position or to a committee, each agency shall provide training for collateral duty safety and health personnel and all members of certified occupational safety and health committees commensurate with the scope of their assigned responsibilities. Such training shall include: The agency occupational safety and health program; section 19 of the Act; Executive Order 12196; this part; agency procedures for the reporting, evaluation and abatement of hazards; agency procedures for reporting and investigating allegations of reprisal, the recognition of hazardous conditions and environments; identification and use of occupational safety and health standards, and other appropriate rules and regulations.

1960.59—TRAINING OF EMPLOYEES AND EMPLOYEE REPRESENTATIVES

(a) Each agency shall provide appropriate safety and health training for employees including specialized job safety and health training appropriate to the work performed by the employee, for example: Clerical; printing; welding; crane operation; chemical analysis, and computer operations. Such training also shall inform employees of the agency occupational safety and health program, with emphasis on their rights and responsibilities.

(b) Occupational safety and health training for employees of the agency who are representatives of employee groups, such as labor organizations which are recognized by the agency, shall include both introductory and specialized courses and materials that will enable such groups to function appropriately in ensuring safe and healthful working conditions and practices in the workplace and enable them to effectively assist in conducting workplace safety and health inspections. Nothing in this paragraph shall be construed to alter training provisions provided by law, Executive Order, or collective bargaining arrangements.

1960.60—TRAINING ASSISTANCE

(a) Agency heads may seek training assistance from the Secretary of Labor, the National Institute for Occupational Safety and Health and other appropriate sources.

(b) After the effective date of Executive Order 12196, the Secretary shall, upon request and with reimbursement, conduct orientation for Designated Agency Safety and Health Officials and/or their designees which will enable them to manage the occupational safety and health programs of their agencies. Such orientation shall include coverage of section 19 of the Act, Executive Order 12196, and the requirements of this part.

(c) Upon request and with reimbursement, the Departmnt of Labor shall provide each agency with training materials to assist in fulfilling the training needs of this subpart, including resident and field training courses designed to meet selected training needs of agency safety and health specialists, safety and health inspectors, and collateral duty safety and health personnel. These materials and courses in no way reduce each agency's responsibility to provide whatever specialized training is required by the unique characteristics of its work.

(d) In cooperation with OPM, the Secretary will develop guidelines and/or provide materials for the safety and health training programs for high-level managers, supervisors, members of committees, and employee representatives.

1960.61–1960.65 (RESERVED)

SUBPART I—RECORDKEEPING AND REPORTING REQUIREMENTS

1960.66—PURPOSE, SCOPE AND GENERAL PROVISIONS

(a) The purpose of this subpart is to establish uniform requirements for the collection and compilation by agencies of occupational safety and health data, for proper evaluation and necessary corrective action and to assist the Secretary in meeting the requirement to develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. The term "incident" as hereinafter used in this subpart, shall include all occupational injuries and illnesses.

(b) In order to perform his duties under section 19 of the Act and Executive Order 12196 particularly with respect to providing the President with current information about the Federal agency safety and health program, it is necessary that the Secretary be promptly informed of serious incidents involving agency employees as provided in § 1960.70. Assistance to agencies in the investigation of such incidents is available pursuant to the provisions of Executive Order 12196 and this subpart.

(c) Each agency shall utilize the information collected through its management information system to identify unsafe and unhealthful working conditions, and to establish program priorities.

(d) The Department of Labor shall provide Federal agencies with the forms and instructions for meeting the recordkeeping and reporting requirements specified in §§ 1960.67, 1960.68, and 1960.69.

(e) The provisions of this subpart are not intended to discourage agencies from utilizing recordkeeping and reporting forms which contain a more detailed breakdown of information than the forms provided by the Department of Labor.

(f) Information required to be submitted to the Department of Labor by this subpart may be submitted on media processable by electronic data processing equipment provided that such media comply with the requirements of the Office of Federal Agency Safety and Health Programs, U.S. Department of Labor.

(g) Information concerning occupational injuries and illnesses or accidents which, puruant to statute or Executive Order, must be kept secert in the interest of national defense or foreign policy, shall be recorded on separate forms. Such records shall not be submitted to the Department of Labor, but may be used by the appropriate Federal agency in evaluating the agency's program to reduce occupational injuries, illnesses and accidents.

1960.67—RECORD OR LOG OF FEDERAL OCCUPATIONAL INJURIES AND ILLNESSES

(a) Each Federal agency shall maintain a record or log of all recordable occupational injuries and illnesses for each establishment. Except as provided in § 1960.71(b) and (c), the log is to be maintained at the establishment.

(b) Within six working days after receiving information on a recordable occupational injury or illness, appropriate information concerning such injury or illness shall be entered on the record or log. For this purpose, OSHA Form No. 100F, or its equivalent, shall be used and shall be completed in the detailed required by that form and the instruction contained therein.

(c) As a minimum, any occupational injury or illness reported by an employee on a Form CA-1 or CA-2 (except first aid cases) to the Office of Workers' Compensation Programs, Department of Labor, shall be considered recordable on the log.

1960.68—SUPPLEMENTARY RECORD OF FEDERAL OCCUPATIONAL INJURIES AND ILLNESSES

In addition to the record or log of Federal occupational injuries and illnesses provided for under § 1960.67, each Federal agency shall maintain a supplementary record for each occupational injury and illness. The record shall be completed within six working days after the receipt of information that a recordable occupational injury or illness has occurred. For this purpose, OSHA Form No. 101F, or its equivalent, shall be completed in the detail required by the form and the instructions therein.

1960.69—ANNUAL SUMMARIES OF FEDERAL OCCUPATIONAL INJURIES AND ILLNESSES

(a) Each Federal agency, on a calendar year basis, shall compile an annual summary of occupational injuries and illness for each reporting unit listed and submitted pursuant to § 1960.74. The summaries shall be based on the record or log of Federal occupational injuries and illnesses maintained pursuant to § 1960.67. OSHA Form No. 102F shall be used for this purpose, and shall be completed in the form and detail required by that form and the instructions contained therein.

(b) Each agency shall furnish the Department of Labor with a copy of its annual summaries compiled on the basis of reporting unit no later than 45 calendar days after the close of the calendar year.

1960.70—REPORTING OF SERIOUS ACCIDENTS

(a) Within 48 hours after the occurrence of an employment accident, the head of the Federal agency shall report by telephone or telegraph to the Office of Federal Agency Safety and Health Programs:

(1) Any occupational accident which is fatal to one or more employees;

(2) Any occupational accident which results in the hospitalization of five or more employees;

(3) Any occupational illness which results in death;

(4) Any occupational accident involving both Federal and non-Federal employees which results in a fatality or the hospitalization of five or more such employees.

Accidents not immediately reportable, but which result in death within six months of the date of the accident, shall be reported within 48 hours of the time the employer becomes aware of the death.

(b) The report shall relate the circumstances of the accident, names of individuals involved, any actions taken by the agency, the number of fatalities, and/or injuries and illnesses and the extent of any injuries. The Secretary may require such additional information in writing or otherwise, as he deems necessary.

1960.71—LOCATION AND UTILIZATION OF RECORDS AND REPORTS

(a) The provisions of this section, dealing with the availability of information compiled pursuant to this subpart, are designed to guide agencies in providing agency employees and their representatives with the basic information necessary to assure that they can actively participate in an agency safety and health program. The provisions of this section are also designed to encourage agencies to allow agency safety and health inspectors to have direct access to the accident, injury and illness records of the establishments they are inspecting in order that they may better carry out their duties pursuant to subpart D of this part.

(b) The log and supplementary records required by §§ 1960.67 and 1960.68 shall be maintained at each establishment. Where, for reasons of efficient administration or practicality, an agency must maintain these records at a place other than at each establishment, such agency shall ensure that there is available at each establishment a copy of these records. These records shall be complete and as current as possible; in no case shall more than 45 days elapse after the recording of an illness or injury occurring in an establishment and the availability of records reflecting that injury or illness at that establishment.

(c)

(1) For agencies engaged in activities such as

agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, the log and supplementary records, or copies thereof, may be maintained at a place to which employees report each day.

(2) For personnel who do not primarily report to work at a single establishment, and who are generally not supervised in their daily work, such as traveling employees, technicians, engineers, etc., the log and supplementary records, or copies thereof, may be maintained at the base from which personnel operate to carry out their activities.

(d) Each Federal agency shall post a copy of the annual summary of Federal occupational injuries and illnesses for an establishment, as compiled pursuant to §§ 1960.67 or 1960.69, at such establishment, not later than 45 calendar days after the close of the calendar year, or otherwise disseminate a copy of the annual summary for an establishment in written form to all employees of the establishment. Copies of the annual summary shall be posted for a minimum of 30 consecutive days in a conspicuous place or places in the establishment where notices to employees are customarily posted. Where establishment activities are physically dispersed, the notice may be posted at the location to which employees report each day. Where the employees do not primarily work at or report to a single location, the notice may be posted at the location from which the employees operate to carry out their activities. Each Federal agency shall take necessary steps to ensure that such summary is not altered, defaced, or covered by other material.

(e) The head of each agency shall ensure access to establishment logs and annual summaries by establishment of Occupational Safety and Health Committees, and by that establishment's employees, former employees and employee representatives.

(f) Agency safety and health inspectors shall also have acess to accident, injury and health records maintained under this subpart and in accordance with the provisions of § 1960.26(a)(1).

1960.72—ACCESS TO RECORDS BY SECRETARY

The records required to be maintained under the provisions of this subpart shall also be available and made accessible to the Secretary or his authorized representative (including personnel of the National Institute for Occupational Safety and Health).

1960.73—RETENTION OF RECORDS

The records and reports required to be maintained under the provisions of this subpart shall be retained by each agency for five years following the end of the calendar year to which they relate, at any location including a Federal record retention center, to which the Secretary or his authorized representative would have reasonable access. In addition, records required by OSHA standards shall be retained in accordance with those standards.

1960.74—IDENTIFICATION OF REPORTING UNITS

(a) Each Federal agency shall submit a new list identifying reporting units to the Department of

Labor, ATTN: Office of Federal Agency Safety and Health Programs, no later than July 1, 1981, and shall update the list as changes occur. The list shall contain the following information:

(1)The names and addresses of each Federal reporting unit which will be covered in the records and reports required by this subpart.

(2) A brief description of any differences between an agency's internal recordkeeping and reporting system and the recordkeeping and reporting system provided by this subpart, including differing forms.

(b) Any Federal agency created or reorganized after July 1, 1981 shall submit the above information within sixty working days of commencement of operations as a new entity.

1960.75—AGENCY ANNUAL REPORTS

(a) The Act and E.O. 12196 require all Federal agency heads to submit to the Secretary an annual report on their agency's occupational safety and health program, containing such information as the Secretary prescribes.

(1) Each agency shall submit to the Secretary by April 1 of each year a report describing the agency occupational safety and health program of the previous calendar year, and objectives for the current year. The report shall include a summary of the agency's self-evaluation findings as required by § 1960.78(b).

(2) The Secretary shall furnish guidelines to agency heads by January 1 each year concerning the preparation of this report for the coming year.

(3) The agency reports shall be used in the preparation of the Secretary's report to the President.

(b) The Secretary shall submit to the President by October 1 of each year a summary report of the status of the occupational safety and health of Federal employees, based on agency reports, evaluations of individual agency progress and problems in correcting unsafe and unhealthful working conditions, and recommendations for improving their performance.

1960.76–1960.77 (RESERVED)

SUBPART J—EVALUATION OF FEDERAL OCCUPATIONAL SAFETY AND HEALTH PROGRAMS

1960.78—PURPOSE AND SCOPE

(a) The purpose of this subpart is to establish a comprehensive program for the evaluation of Federal employee occupational safety and health programs. This subpart includes the responsibilities of agency heads in conducting self-evaluations of the effectiveness of their occupational safety and health programs, and the responsibilities of the Secretary in evaluating the extent to which each agency head has developed and implemented agency programs in accordance with the requirements of Executive Order 12196 and this part.

(b) Agency heads shall develop and implement a program for evaluating the effectiveness of their agency's occupational safety and health program. An annual summary report shall be submitted to the Secretary covering self-evaluations conducted during the previous year.

(c) The Secretary shall conduct a comprehensive evaluation of each Federal agency's occupational safety and health program. Evaluations shall be conducted on a regular schedule to determine the performance levels of each agency's program. The Secretary shall submit to the President each year: A summary report of the status of the occupational safety and health of Federal employees; Department of Labor evaluations, together with agency responses, of individual agency progress and problems in correcting unsafe and unhealthful working conditions, and recommendations for improving agency's performance.

1960.79—SELF-EVALUATIONS OF OCCUPATIONAL SAFETY AND HEALTH PROGRAMS

Agency heads shall develop and implement a program of self-evaluations to determine the effectiveness of their occupational safety and health programs. The self-evaluations are to include qualitative assesments of the extent to which their agency safety and health programs are:

(a) Developed in accordance with the requirements set forth in Executive Order 12196 and this part and,

(b) Implemented effectively in all agency field activities.

Agencies needing assistance in developing a self-evaluation program should contact the Secretary.

1960.80—SECRETARY'S EVALUATIONS OF AGENCY OCCUPATIONAL SAFETY AND HEALTH PROGRAMS

(a) In accordance with section 1-401(h), the Secretary shall develop a comprehensive program for evaluation an agency's occupational safety and health program. To accomplish this, the Secretary shall conduct:

(1) A complete and extensive evaluation of all elements of an agency's occupational safety and health program on a regular basis;

(2) Special studies of limited areas of an agency's occupational safety and health programs as deemed necessary by the Secretary; and

(3) Field reviews and scheduled inspections of agency workplaces as deemed necessary by the Secretary.

(b) The Secretary shall develop and distribute to Federal agencies detailed information on the Department of Labor's evaluation program. The information shall include, but is not limited to:

(1) The major program elements included in a complete and extensive evaluation of an agency's occupational safety and health program;

(2) The methods and factors used to determine the effectiveness of each element of an agency's program;

(3) The factors used to define "large" or "more hazardous" Federal agencies, establishments, or operations;

(4) The procedures for conducting evaluations including field visits and scheduled inspections; and

(5) The reporting format for agency heads in submitting annual summaries of their self-evaluation programs.

(c) Prior to the initiation of an agency evaluation, and Department of Labor will review the annual agency self-evaluation summary report. The Secretary will then develop a program evaluation plan before the initiation of an agency evaluation. A copy of the plan shall be furnished to the agency to be evaluated at the time of the notification of the evaluation.

(d) To facilitate the evaluation process and to insure full understanding of the procedures to be followed and the support required from the agency, the Secretary, or the Secretary's representative, shall conduct an opening conference with the agency head or designee. At the opening conference, the Secretary's authority and evaluation plan will be explained.

(e) The agency evaluation should be completed within 90 calendar days of the date of the opening conference.

(f) A report of the evaluation shall be submitted to the agency head by the Secretary within 90 calendar days from the date of the closing conference.

(g) Agency heads shall respond to the evaluation report within 60 calendar days of receipt of the report.

1960.81–1960.83 (RESERVED)

SUBPART K—FIELD FEDERAL SAFETY AND HEALTH COUNCILS

1960.84—PURPOSE

(a) Executive Order 12196 provides that the Secretary shall "facilitate the exchange of ideas and information throughout the Government about occupational safety and health."

(b) Consistent with this objective, the Secretary will continue to sponsor and/or provide guidance for those Field Federal Safety and Health Councils now established and in operation, and establish new field councils as necessary. The field councils will consist primarily of qualified representatives of local area Federal field activities whose duties pertain to occupational safety and health, and also of representatives of recognized local labor organizations, or other civialian employee organizations, at local area Federal field activities. For the purpose of this subpart the definition of field activity will be provided by each agency.

1960.85—ROLE OF THE SECRETARY

(a) The Secretary shall maintain liaison with agency heads to ensure that they encourage their field activities to participate actively in field council programs. To ensure maximum participation, the field councils' annual reports to the Secretary shall shall provide descriptions of the degree of management and employee participation by the defined Federal field activities. The Secretary shall annually furnish each agency head with a report consolidating the information received as to the participation of the agency's several field installations in field council activities.

(b) The Secretary shall provide leadership and guidance and make available necessary equipment, supplies, and staff services to the Field Federal Safety and Health Councils to assist them in carrying out their responsibilities. The Secretary shall also provide consultative and technical services to field councils. These services shall involve aid in any phase of developing and planning programs; and in sponsoring, conducting or supporting safety and health training courses.

1960.86—ESTABLISHING COUNCILS

(a) Those field councils established and in operation prior to the effective date of this subpart will continue to function without interruption provided they are operating in accordance with the provision of their charter and this subpart.

(b) The Secretary may establish a council in any area where ten or more Federal establishments totaling 300 or more employees are located within an area having a radius of 50 miles, and there is substantial agreement among the agencies that such a council would be useful. In any such area where there is no council already established, a field representative of the Secretary may, upon his own initiative or at the request of any establishment within the area, contact representatives of all establishments within the area and encourage the organization of a field council.

(c) After a new council has been organized, officers elected, and articles of organization drafted and accepted by the council membership, a formal request for recognition as a field council shall be sent to the Secretary. Upon approval of the Articles of Organization, a charter will be issued.

(d) At the first general meeting of the council, committess should be appointed and the cooperation of all participants should be solicited to aid the functioning of committees and the successful accomplishment of the council's objectives.

1960.87—OBJECTIVES

The basic objective of field councils is to facilitate the exchange of ideas and information to assist agencies to reduce the incidence, severity and cost of occupational accidents, injuries, and illnesses. Field councils shall act on behalf of the Secretary or his designees on occupational safety and health activities in carrying out within their respective geographic areas the following functions:

(a) To act as a clearinghouse on information and data on occupational accidents, injuries, and illnesses and their prevention.

(b) To plan, organize and conduct field council meetings or programs which will give technical advice and information on occupational safety and health to representatives of participating agencies and employee organizations.

(c) To promote improvement of safety and health programs and organizations in each Federal agency represented or participating in council activities.

(d) To promote coordination, cooperation, and sharing of resources and expertise to aid agencies with inadequate or limited resources. These objectives can be accomplished in a variety of ways. For example, field councils could organize and conduct training programs for employee representatives, collateral duty and professional safety and health personnel, coordinate or promote programs for inspections, or, on request, conduct inspections and evaluations of the agencies' safety and health programs.

(e) To provide Federal Executive Boards, Federal Executive Associations, labor union organizations and other employee representatives with information on the administrative and technical aspects of safety and health programs.

(f) To evaluate the safety and health problems peculiar to local conditions and facilitate solutions to these problems through council activities.

(g) To develop a cooperative relationship with local community leaders by informing them of the existing functions and objectives of the council and by calling on them for support and participation in council meetings and activities.

1960.88—MEMBERSHIP AND PARTICIPATION

(a) Each field council shall consist of the designated representatives of local Federal activities appointed by their respective activity heads, after consultation with appropriate employee representatives and appropriate certified safety and health committees.

(b) Federal agency heads should encourage each field activity having responsibility for the safety and health of agency employees to participate in the programs of these councils.

(c) Each activity head shall appoint an equal number of officially designated representatives (with designated alternates), from management and from nonmanagement employees, consistent with applicable collective bargaining arrangements.

(d) Representatives shall be selected from individuals in the following categories:

(1) Federal occupational safety and health professionals.

(2) Related Federal professionals, or collateral duty personnel. This includes persons employed in professions or occupations related to or concerned with safety and health of employees.

(3) Line management officials.

(4) Representatives of recognized Federal labor or other employee organizations.

(i) Where certified occupational safety and health committees exist, nonmanagement members of the committees shall be given the opportunity to select one individual for official appointment to field councils by the activity head.

(ii) Where employees are represented by collective bargaining arrangements, but no committee exists, nonmanagement members of field councils shall be selected from among those recommended by the exclusive bargaining representatives for official appointment to field councils by the activity head.

(iii) Where some employees in an activity are represented by collective bargaining arrangements and others are not, the agency head should solicit nominations for the agency's designated nonmanagement representative and alternate both from lawful labor organization(s) with collective bargaining status and from employees not represented through collective bargaining and should select from the nominees for official appointment as designated employee representatives on the field council.

(e) Representatives from non-Federal organizations. Associate membership may be granted to any non-Federally employed person who demonstrated interest in occupational safety and health. An associate member has no voting rights and may not hold any office.

(f) No maximum limitation shall be imposed by a council on itself, in regard to the numbers of personnel in any of the above categories that may attend meetings and/or participate in field council activities. An agency is free to have any number of individuals, in addition to the officially designated representatives participate in council activities.

(g) Only officially designated agency representatives or their alternates shall have voting privileges. All representatives and participants shall serve without additional compensation.

(h) Travel funds shall be made available equally to management and nonmanagement employee representatives.

1960.89—ORGANIZATION

(a) Field council officers shall include, as a minimum, a chairperson, vice chairperson, and secretary. Officers shall be elected for a one or two-year term on a calendar year basis by a majority vote of the designated representatives. Election of officers shall be held at least 60 days before the beginning of a calendar year. The election may be conducted at a regularly scheduled meeting or by letter ballot.

(b) Each council shall notify the appropriate OSHA Regional Office and the Office of Federal Agency Safety and Health Programs of the name, agency address, and telephone number of each newly elected official.

(c) Each council shall have an Executive Committee consisting of all elected officers, chairpersons of appointed committees and the immediate past chairperson of the field council.

(d) In addition to the Executive Committee, each council shall have either a membership committee, a program committee and a finance committee, or a council official designated responsibility in these areas. Additional committees may be appointed by the chairperson for specific purpose as warranted.

1960.90—OPERATING PROCEDURES

(a) The Executive Committee of each council shall meet at least 45 days before the beginning of each calendar year to approve an annual program for the council designed to accomplish the objectives and functions stated in § 1960.87. In addition, the Executive Committee shall meet periodically to ensure that the meetings and other activities of the council are being conducted as outlined in the council schedule.

(b) The council program shall include at least four meetings or activities per year dealing with occupational safety and health issues.

(c) Each field council shall submit to the Secretary or his designee by March 15 of each year a report describing the activities and programs of the previous calender year and plans for the current year. In addition, the report shall address the participation and attendance of designated representatives of the council. The Office of Federal Agency Safety and Health Programs, OSHA, shall furnish guidelines to field councils concerning the preparation of this report.

(d) Upon determination that a council is not operating in accordance with its charter and the provisions of this subpart, and after consultation with appropriate OSHA regional officials, the Secretary shall revoke the council's charter. Upon revocation of a charter, the council shall surrender all its government property to the appropriate OSHA regional official. Any continuing or future organization in the same geographical area shall not use the title Field Federal Safety and Health Council, or any derivation thereof, unless formally rechartered by the Secretary. Notification of revocation of a council's charter shall be sent to the chairperson, where identifiable, and to the appropriate OSHA Regional Office.

1960.91—(RESERVED)

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PART 1975

COVERAGE OF EMPLOYERS UNDER THE WILLIAMS-STEIGER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

1975.1 Purpose and scope.
1975.2 Basis of authority.
1975.3 Extent of coverage.
1975.4 Coverage.
1975.5 States and political subdivisions of States.
1975.6 Policy as to domestic household employment activities in private residences.

AUTHORITY: The provisions of this Part 1975 issued under 84 Stat. 1590; 29 U.S.C. 667.

SOURCE: The provisions of this Part 1975 appear at 37 F.R. 929, Jan. 21, 1972, unless otherwise noted.

1975.1—PURPOSE AND SCOPE

(a) Among other things, the Williams-Steiger Act poses certain duties on employers. This part has the limited purpose and scope of clarifying which persons are considered to be employers either as a matter of interpretation of the intent and terms of the Act or as a matter of policy appropriate to administering and enforcing the Act. In short, the purpose and scope of this part is to indicate which persons are covered by the Act as employers and, as such, subject to the requirements of the Act.

(b) It is not the purpose of this part to indicate the legal effect of the Act, once coverage is determined. Section 4(b)(1) of the Act provides that the statute shall be inapplicable to working conditions to the extent they are subject to another Federal agency's exercise of different statutory authority affecting the occupational safety and health aspects of those conditions. Therefore, a person may be considered an employer covered by the Act, and yet standards issued under the Act respecting certain working conditions would not be applicable to the extent those conditions were subject to another agency's authority.

1975.2—BASIS OF AUTHORITY

The power of Congress to regulate employment conditions under the Williams-Steiger Occupational Safety and Health Act of 1970, is derived mainly from the Commerce Clause of the Constitution. (Sec. 2(b), Public Law 91–596; U.S. Constitution, Art. I, Sec. 8, Cl. 3; "United States v. Darby," 312 U.S. 100.) The reach of the Commerce Clause extends beyond Federal regulation of the channels and instrumentalities of interstate commerce so as to empower Congress to regulate conditions or activities which affect commerce even though the activity or condition may itself not be commerce and may be purely intrastate in character. ("Gibbons v. Ogden," 9 Wheat. 1, 195; "United States v. Darby," supra; "Wickard v. Filburn, 317 U.S. 111, 117; and "Perez v. United States," 91 S. Ct. 1357 (1971).) And it is not necessary to prove that any particular intrastate activity affects commerce, if the activity is included in a class of activities which Congress intended to regulate because the class affects commerce. ("Heart of Atlanta Motel, Inc. v. United States," 379 U.S. 241; "Katzenbach v. McClung," 379 U.S. 294; and "Perez v. United States," supra.) Generally speaking, the class of activities which Congress may regulate under the commerce power may be as broad and as inclusive as Congress intends, since the commerce power is plenary and has no restrictions placed on it except specific constitutional prohibitions and those restrictions Congress, itself, places on it. ("United States v. Wrightwood Dairy Co.," 315 U.S. 110; and "United States v. Darby," supra.) Since there are no specific constitutional prohibitions involved, the issue is reduced to the question: How inclusive did Congress intend the class of activities to be under the Williams-Steiger Act?

1975.3—EXTENT OF COVERAGE

(a) Section 2(b) of the Williams-Steiger Occupational Safety and Health Act (Public Law 91–596) sets forth the purpose and policy of Congress in enacting this legislation. In pertinent part, that section reads as follows:

> (b) Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources * * *

Congressman William Steiger described the scope of the Act's coverage in the following words during a discussion of the legislation on the floor of the House of Representatives:

> The coverage of this bill is as broad, generally speaking, as the authority vested in the Federal Government by the commerce clause of the Constitution (Cong. Rec., vol. 116, p. H-11899, Dec. 17, 1970).

The legislative history, as a whole, clearly shows that every amendment or other proposal which would have resulted in any employee's being left outside the protections afforded by the Act was rejected. The reason for excluding no employee, either by exemption or limitation on coverage, lies in the most fundamental of social purposes of this legislation which is to protect the lives and health of human beings in the context of their employment.

(b) The Williams-Steiger Act includes special provisions (secs. 19 and 18(c) (6)) for the protection of Federal and State employees to whom the Act's other provisions are made inapplicable under section 3(5), which excludes from the definition of the term "employer" both the United States and any State or political subdivision of a State.

(c) In the case of section 4(b) (1) of the Act, which makes the Act inapplicable to working conditions to the extent they are protected under laws administered by other Federal agencies, Congress did not intend to grant any general exemptions under the Act; its sole purpose was to avoid duplication of effort by Federal agencies in establishing a national policy of occupational safety and health protection.

(d) Interpretation of the provisions and terms of the Williams-Steiger Act must of necessity be consistent with the express intent of Congress to exercise its commerce power to the extent that, "so far as possible, every working man and woman in the Nation" would be protected as provided for in the Act. The words "so far as possible" refer to the practical extent to which governmental regulation and expended resources are capable of achieving safe and healthful working conditions; the words are not ones of limitation on coverage. The controlling definition for the purpose of coverage under the Act is that of "employer" contained in section 3(5). This term is defined as follows:

> (5) The term "employer" means any person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

In carrying out the broad coverage mandate of Congress, we interpret the term "business" in the above definition as including any commercial or noncommercial activity affecting commerce and involving the employment of one or more employees; the term "commerce" is defined in the Act itself, in section 3(3). Since the legislative history and the words of the statute, itself, indicate that Congress intended the full exercise of its commerce power in order to reduce employment-related hazards which, as a whole impose a substantial burden on commerce, it follows that all employments where such hazards exist or could exist (that is, those involving the employment of one or more employees) were intended to be regulated as a class of activities which affects commerce.

1975.4—COVERAGE

(a) General.

Any employer employing one or more employees would be an "employer engaged in a business affecting commerce who has employees" and, therefore, he is covered by the Act as such.

(b) Clarification as to certain employers.

(1) The professions, such as physicians, attorneys, etc. Where a member of a profession, such as an attorney or physician, employs one or more employees such member comes within the definition of an employer as defined in the Act and interpreted thereunder and, therefore, such member is covered as an employer under the Act and required to comply with its provisions and with the regulations issued thereunder to the extent applicable.

(2) Agricultural employers. Any person engaged in an agricultural activity employing one or more employees comes within the definition of an employer under the Act, and therefore, is covered by its provisions. However, members of the immediate family of the farm employer are not regarded as employees for the purposes of this definition.

(3) Indians. The Williams-Steiger Act contains no special provisions with respect to different treatment in the case of Indians. It is well settled that under statutes of general application, such as the Williams-Steiger Act, Indians are treated as any other person, unless Congress expressly provided for special treatment. "FPC v. Tuscarora Indian Nation," 362 U.S. 99, 115–118 (1960); "Navajo Tribe v. N.L.R.B.," 288 F.2d 162, 164–165 (D.C. Cir. 1961), cert. den. 366 U.S. 928 (1961). Therefore, provided they otherwise come within the definition of the term "employer" as interpreted in this part, Indians and Indian tribes, whether on or off reservations, and non-Indians on reservations, will be treated as employers subject to the requirements of the Act.

(4) Nonprofit and charitable organizations. The basic purpose of the Williams-Steiger Act is to improve working environments in the sense that they impair, or could impair, the lives and health of employees. Therefore, certain economic tests such as whether the employer's business is operated for the purpose of making a profit or has other economic ends, may not properly be used as tests for coverage of an employer's activity under the Williams-Steiger Act. To permit such economic tests to serve as criteria for excluding certain employers, such as nonprofit and charitable organizations which employ one or more employees, would result in thousands of employees being left outside the protections of the Williams-Steiger Act in disregard of the clear mandate of Congress to assure "every working man and woman in this Nation safe and healthful working conditions * * *". Therefore, any charitable or non-profit organization which employs one or more employees is covered under the Williams-Steiger Act and is required to comply with its provisions and the regulations issued thereunder. (Some examples of covered charitable or non-profit organizations would be disaster relief organizations, philanthropic organizations, trade associations, private educational institutions, labor organizations, and private hospitals.)

(c) Coverage of churches and special policy as to certain church activities.

(1) Churches. Churches or religious organizations, like charitable and nonprofit organizations, are considered employers under the Act where they employ one or more persons in secular activities. As a matter of enforcement policy, the performance of. or participation in, religious services (as distinguished from secular or proprietary activities whether for charitable or religion-related purposes) will be regarded as not constituting employment under the Act. Any person, while performing religious services or participating in them in any degree is not regarded as an employer or employee under the Act, notwithstanding the fact that such person may be regarded as an employer or employee for other purposes—for example, giving or receiving remuneration in connection with the performance of religious services.

(2) Examples. Some examples of coverage of religious organizations as employers would be: A private hospital owned or operated by a religious organization; a private school or orphanage owned or operated by a religious organization; commercial establishments of religious organizations engaged in producing or selling products such as alcoholic beverages, bakery goods, religious goods, etc.; and administrative, executive, and other office personnel employed by religious organizations. Some examples of noncoverage in the case of religious organizations would be: clergymen while performing or participating in religious services; and other participants in religious services; namely, choir masters, organists, other musicians, choir members, ushers, and the like.

1975.5—STATES AND POLITICAL SUBDIVISIONS THEREOF

(a) General.

The definition of the term "employer" in section 3(5) of the Act excludes the United States and States and political subdivisions of a State:

> (5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

The term "State" is defined as follows in section 3(7) of the Act:

> (7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

Since States, as defined in section 3(7) of the Act, and political subdivisions thereof are not regarded as employers under section 3(5) of the Act, they would not be covered as employers under the Act, except to the extent that section 18(c)(6), and the pertinent regulations thereunder, require as a condition of approval by the Secretary of Labor of a State plan that such plan:

> (6) Contain[s] satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan.

(b) Tests.

Any entity which has been (1) created directly by the State, so as to constitute a department or administrative arm of the government, or (2) administered by individuals who are controlled by public officials and responsible to such officials or to the general electorate, shall be deemed to be a "State or political subdivision thereof" under section 3(5) of the Act and, therefore, not within the definition of employer, and, consequently, not subject to the Act as an employer.

(c) Factors for meeting the tests.

Various factors will be taken into consideration in determining whether an entity meets the test discussed above. Some examples of these factors are: Are the individuals who administer the entity appointed by a public official or elected by the general electorate? What are the terms and conditions of the appointment? Who may dismiss such individuals and under what procedures? What is the financial source of the salary of these individuals? Does the entity earn a profit? Are such profits treated as revenue? How are the entity's functions financed? What are the powers of the entity and are they usually characteristic of a government rather than a private instrumentality like the power of eminent domain? How is the entity regarded under State and local law as well as under other Federal laws? Is the entity exempted from State and local tax laws? Are the entity's bonds, if any, tax-exempt? As to the entity's employees, are they regarded like employees of other State and political subdivisions? What is the financial source of the employee-payroll? How do employee fringe benefits, rights, obligations, and restrictions of the entity's employees compare to those of the employees of other State and local departments and agencies? In evaluating these factors, due regard will be given to whether any occupational safety and health program exists to protect the entity's employees.

(d) Weight of the factors.

The above list of factors is not exhaustive and no factor, isolated from the particular facts of a case, is assigned any particular weight for the purpose of a determination by the Secretary of Labor as to whether a given entity is a "State or political subdivision of a State" and, as such, not subject to the Act as an "employer". Each case must be viewed on its merits; and whether a single factor will be decisive, or whether the factors must be viewed in their relationship to each other as part of a sum total, also depends on the merits of each case.

(e) Examples.

(1) The following types of entities would normally be regarded as not being employers under section 3(5) of the Act: the State Department of Labor and Industry; the State Highway and Motor Vehicle Department; State, county, and municipal law enforcement agencies as well as penal institutions; State, county, and municipal judicial bodies; State University Boards of Trustees; State, county, and municipal public school boards and commissions; and public libraries.

(2) Depending on the facts in the particular situation, the following types of entities would probably be excluded as employers under section 3(5) of the Act: harbor districts, irrigation districts, port authorities, bi-State authorities over bridges, highways, rivers, harbors, etc.; municipal transit entities; and State, county, and local hospitals and related institutions.

(3) The following examples are of entities which would normally not be regarded as a "State or political subdivision of a State", but unusual factors to the contrary in a particular case may indicate otherwise: Public utility companies, merely regulated by State or local bodies; businesses, such as alcoholic beverage distributors, licensed under State or local law; other business entities which under agreement perform certain functions for the State, such as gasoline stations conducting automobile inspections for State and county governments.

1975.6—POLICY AS TO DOMESTIC HOUSEHOLD EMPLOYMENT ACTIVITIES IN PRIVATE RESIDENCES

As a matter of policy, individuals who, in their own residences, privately employ persons for the purpose of performing for the benefit of such individuals what are commonly regarded as ordinary domestic household tasks, such as house cleaning, cooking, and caring for children, shall not be subject to the requirements of the Act with respect to such employment.

PART 1977

DISCRIMINATION AGAINST EMPLOYEES EXERCISING RIGHTS UNDER THE WILLIAMS-STEIGER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

GENERAL

1977.1 Introductory statement.
1977.2 Purpose of this part.
1977.3 General requirements of section 11(c) of the Act.
1997.4 Persons prohibited from discriminating.
1977.5 Persons protected by section 11(c).
1977.6 Unprotected activities distinguished.

SPECIFIC PROTECTIONS

1977.9 Complaints under or related to the Act.
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1977.11 Testimony.
1977.12 Exercise of any right afforded by the Act.

PROCEDURES

1977.15 Filing of complaint for discrimination.
1977.16 Notification of Secretary of Labor's determination.
1977.17 Withdrawal of complaint.
1977.18 Arbitration or other agency proceedings.

SOME SPECIFIC SUBJECTS

1977.21 Walkaround pay disputes.
1977.22 Employee refusal to comply with safety rules.
1977.23 State plans.

AUTHORITY: Sec. 8(g)(2), Public Law 91-596, 84 Stat. 1600 (26 U.S.C. 657). Interpret or apply sec. 11(c), Public Law 91-596, 84 Stat. 1603 (29 U.S.C. 660).

SOURCE: The provisions of this Part 1977 appear at 38 F.R. 2681, Jan. 29, 1973 unless otherwise noted.

GENERAL

1977.1—INTRODUCTORY STATEMENT

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.), hereinafter referred to as the Act, is a Federal statute of general application designed to regulate employment conditions relating to occupational safety and health and to achieve safer and healthier workplaces throughout the Nation. By terms of the Act, every person engaged in a business affecting commerce who has employees is required to furnish each of his employees employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm, and, further, to comply with occupational safety and health standards promulgated under the Act. See Part 1975 of this chapter concerning coverage of the Act.

(b) The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of workplaces, and recordkeeping requirements. Enforcement procedures initiated by the Department of Labor, review proceedings before an independent quasi-judicial agency (the Occupational Safety and Health Review Commission), and express judicial review are provided by the Act. In addition, States which desire to assume responsibility for development and enforcement of standards which are at least as effective as the Federal standards published in this chapter may submit plans for such development and enforcement of the Secretary of Labor.

(c) Employees and representatives of employees are afforded a wide range of substantive and procedural rights under the Act. Moreover, effective implementation of the Act and achievement of its goals depend in large part upon the active but orderly participation of employees, individually and through their representatives, at every level of safety and health activity.

(d) This part deals essentially with the rights of employees afforded under section 11(c) of the Act. Section 11(c) of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

1977.2—PURPOSE OF THIS PART

The purpose of this part is to make available in one place interpretations of the various provisions of section 11(c) of the Act which will guide the Secretary of Labor in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

1977.3—GENERAL REQUIREMENTS OF SECTION 11(c) OF THE ACT

Section 11(c) provides in general that no person shall discharge or in any manner discriminate against any employee because the employee has:

(a) Filed any complaint under or related to the Act;

(b) Instituted or caused to be instituted any proceeding under or related to the Act;

(c) Testified or is about to testify in any proceeding under the Act or related to the Act; or

(d) Exercised on his own behalf or on behalf of others any right afforded by the Act.

Any employee who believes that he has been discriminated against in violation of section 11(c) of the Act may, within 30 days after such violation occurs, lodge a complaint with the Secretary of Labor alleging such violation. The Secretary shall then cause appropriate investigation to be made. If, as a result of such investigation, the Secretary determines that the provisions of section 11(c) have been violated civil action may be instituted in any appropriate United States district court, to restrain violations of section 11(c)(1) and to obtain other appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay. Section 11(c) further provides for notification of complainants by the Secretary of determinations made pursuant to their complaints.

1977.4—PERSONS PROHIBITED FROM DISCRIMINATING

Section 11(c) specifically states that "no person shall discharge or in any manner discriminate against any employee" because the employee has exercised rights under the Act. Section 3(4) of the Act defines "person" as "one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any group of persons." Consequently, the prohibitions of section 11(c) are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 11(c) would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. See, Meek v. United States, 136 F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burns, 137 F. 2d 37 (3rd Cir., 1943).

1977.5—PERSONS PROTECTED BY SECTION 11(c)

(a) All employees are afforded the full protection of section 11(c). For purposes of the Act, an employee is defined as "an employee of an employer who is employed in a business of his employer which affects commerce." The Act does not define the term "employ." However, the broad remedial nature of this legislation demonstrates a clear congressional intent that the existence of an employment relationship, for purposes of section 11(c), is to be based upon economic realities rather than upon common law doctrines and concepts. See, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

(b) For purposes of section 11(c), even an applicant for employment could be considered an employee. See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957). Further, because section 11(c) speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

(c) In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would not ordinarily be within the contemplated coverage of section 11(c).

1977.6—UNPROTECTED ACTIVITIES DISTINGUISHED

(a) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of section 11(c) apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).

(b) At the same time, to establish a violation of section 11(c), the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, section 11(c) has been violated. See, Mitchell v. Goodyear Tire & Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962). Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

SPECIFIC PROTECTIONS

1977.9—COMPLAINTS UNDER OR RELATED TO THE ACT

(a) Discharge of, or discrimination against, an employee because the employee has filed "any complaint * * * under or related to this Act * * *" is prohibited by section 11(c). An example of a complaint made "under" the Act would be an employee request for inspection pursuant to section 8(f). However, this would not be the only type of complaint protected by section 11(c). The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. (See Cong. Rec., vol. 116 p. P. 42206 Dec. 17, 1970).

(b) Complaints registered with other Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

(c) Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. (Section 2(1), (2), and (3).) Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

1977.10—PROCEEDINGS UNDER OR RELATED TO THE ACT

(a) Discharge of, or discrimination against, any employee because the employee has "instituted or caused to be instituted any proceeding under or related to this Act" is also prohibited by section 11(c). Examples of proceedings which could arise specifically under the Act would be inspections of worksites under section 8 of the Act, employee contest of abatement date under section 10(c) of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under section 6(b) of the Act and part 1911 of this chapter, employee application for modification of revocation of a variance under section 6(d) of the Act and part 1905 of this chapter, employee judicial challenge to a standard under section 6(f) of the Act and employee appeal of an Occupational Safety and Health Review Commission order under section 11(a) of the Act. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in §1977.9 would also be applicable.

(b) An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

1977.11—TESTIMONY

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by section 11(c). This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rule making or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

1977.12—EXERCISE OF ANY RIGHT AFFORDED BY THE ACT

(a) In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the Act, section 11(c) also protects employees from discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act: for example, there is a right to participate as a party in enforcement proceedings (sec. 10). Certain other rights exist by necessary implication. For example, employees may request information from the Occupational Safety and Health Administration: such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Secretary in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

(b)

(1) On the other hand, review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to section 8(f) of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of section 11(c) by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

(2) However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

[38 F.R. 2681, Jan. 29, 1973 as amended at 38 F.R. 4577, Feb. 16, 1973.]

PROCEDURES

1977.15—FILING OF COMPLAINT FOR DISCRIMINATION

(a) Who may file.

A complaint of section 11(c) discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

(b) Nature of filing.

No particular form of complaint is required.

(c) Place of filing.

Complaint should be filed with the Area Director (Occupational Safety and Health Administration) responsible for enforcement activities in the geographical area where the employee resides or was employed.

(d) Time for filing.

(1) Section 11(c)(2) provides that an employee who believes that he has been discriminated against in violation of section 11(c)(1) "may, within 30 days after such violation occurs," file a complaint with the Secretary of Labor.

(2) A major purpose of the 30-day period in this provision is to allow the Secretary to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

(3) However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

1977.16—NOTIFICATION OF SECRETARY OF LABOR'S DETERMINATION

Section 11(c)(3) provides that the Secretary is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Secretary's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in section 11(c)(3).

1977.17—WITHDRAWAL OF COMPLAINT

Enforcement of the provisions of section 11(c) is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Secretary's investigation. The Secretary's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

1977.18—ARBITRATION OR OTHER AGENCY PROCEEDINGS

(a) General.

(1) An employee who files a complaint under section 11(c) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Secretary's jurisdiction to entertain section 11(c) complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Secretary may file action in U.S. district court regardless of the pendency of other proceedings.

(2) However, the Secretary also recognizes the national policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. See, e.g., Boy's Markets, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971). By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to section 11(c) complaints.

(3) Where a complainant is in fact pursuing remedies other than those provided by section 11(c), postponement of the Secretary's determination and deferral to the results of such proceedings may be in order. See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).

(b) Postponement of determination.

Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under section 11(c) and those proceedings are not likely to violate the rights guaranteed by section 11(c). The factual issues in such proceedings must be substantially the same as those raised by section 11(c) complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (Oct. 10, 1972); Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).

(c) Deferral to outcome of other proceedings.

A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicatory hearing thereof, such dismissal will not ordinarily be regarded as determinative of the section 11(c) complaint.

1977.21—[REMOVED]

[45 F.R. 72119, October 31, 1980]

1977.22—EMPLOYEE REFUSAL TO COMPLY WITH SAFETY RULES

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by section 11(c). This situation should be distinguished from refusals to work, as discussed in §1977.12.

1977.23—STATE PLANS

A State which is implementing its own occupational safety and health enforcement program pursuant to section 18 of the Act and Parts 1902 and 1952 of this chapter must have provisions as effective as those of section 11(c) to protect employees from discharge or discrimination. Such provisions do not divest either the Secretary of Labor or Federal district courts of jurisdiction over employee complaints of discrimination. However, the Secretary of Labor may refer complaints of employees adequately protected by State Plans' provisions to the appropriate State agency. The basic principles outlined in § 1977.18, supra will be observed as to deferrals to findings of State agencies.

PART 1990

IDENTIFICATION, CLASSIFICATION, AND REGULATION OF POTENTIAL OCCUPATIONAL CARCINOGENS

GENERAL

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THE OSHA CANCER POLICY

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REGULATION OF POTENTIAL OCCUPATIONAL CARCINOGENS

1990.141 Advance notice of proposed rulemaking.
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1990.144 Criteria for consideration of arguments on certain issues.
1990.145 Consideration of substantial new issues or substantial new evidence.
1990.146 Issues to be considered in the rulemaking.
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MODEL STANDARDS

1990.151 Model standard pursuant to section 6(b) of the Act.
1990.152 Model emergency temporary standard pursuant to section 6(c) of the Act.

AUTHORITY: Secs. 4(b), 6(b), 8(c) and 8 (g) (84 Stat. 1592, 1593, 1599, 1599, 29 U.S.C. 653, 655, 657), The Secretary of Labor's Order 8-76 (41 FR 25059) and 29 CFR Part 1911, Chapter XVII of Title 29.

SOURCE: The provisions of this part 1990 appear at 45 F.R. 5002, January 22, 1980 as amended at 45 F.R. 43405, June 27, 1980, and 46 F.R. 5881, January 21, 1981, unless otherwise noted.

GENERAL

1990.101—SCOPE

This Part establishes criteria and procedures for the identification, classification, and regulation of potential occupational carcinogens found in each workplace in the United States regulated by the Occupational Safety and Health Act of 1970 (the Act). The procedures contained in this Part supplement the procedural regulations in other parts of this Chapter. In the event of a conflict, the procedures contained in this Part shall govern the identification, classification, and regulation of potential occupational carcinogens. This Part may be referred to as "The OSHA Cancer Policy."

1990.102—PURPOSE

The Act provides, among other things, that "the Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health of functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his or her working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired" (section 6(b)(5)). It is the purpose of the regulations of this Part to carry out the intent of the Act with respect to the identification, classification, and regulation of potential occupational carcinogens.

1990.103—DEFINITIONS

Terms used in this Part shall have the meanings set forth in the Act. In addition, as used in this Part, the following terms shall have the meanings set forth below:

"Act" means the Occupational Safety and Health Act of 1970 (Pub. L. 91-596, 84 Stat. 1590 *et seq.*, 29 U.S.C. 551 *et seq.*).

"Administrator of EPA" means the Administrator of the United States Environmental Protection Agency, or designee.

"Chairperson of CPSC" means the Chairman of the United States Consumer Product Safety Commission, or designee.

"Commissioner of FDA" means the Commissioner of the Food and Drug Administration, United States Department of Health and Human Services, or designee.

"Director of NCI" means the Director of the National Cancer Institute, United States Department of Health and Human Services, or designee.

"Director of NIEHS" means the Director of the National Institute of Environmental Health Sciences, United States Department of Health and Human Services, or designee.

"Director of NIOSH" means the Director of the National Institute for Occupational Safety and Health, United States Department of Health and Human Services, or designee.

"Secretary of HHS" means the Secretary of the United States Department of Health and Human Services, or designee.

"Mutagenesis" means the induction of heritable changes in the genetic material of either somatic or germinal cells.

"Positive results in short-term tests" means positive results in assays for two or more of the following types of effect: (1) the induction of DNA damage and/or repair; (2) mutagenesis in bacteria, yeast, *Neurospora or Drosophila melanogaster;* (3) mutagenesis in mammalian somatic cells; (4) mutagenesis in mammalian germinal cells; or (5) neoplastic transformation of mammalian cells in culture.

"Potential occupational carcinogen" means any substance, or combination or mixture of substances, which causes an increased incidence of benign and/or malignant neoplasms, or a substantial decrease in the latency period between exposure and onset of neoplasms in humans or in one or more experimental mammalian species as the result of any oral, respiratory or dermal exposure, or any other exposure which results in the induction of tumors at a site other than the site of administration. This definition also includes any substance which is metabolized into one or more potential occupational carcinogens by mammals.

1990.104—SCIENTIFIC REVIEW PANEL

(a) General. At any time, the Secretary may request the Director of NCI, the Director of NIEHS and/or the Director of NIOSH to convene a scientific review panel ("the panel") to provide recommendations to the Secretary in the identification, classification, or regulation of any potential occupational carcinogen.

(b) Membership. The panel will consist of individuals chosen by the respective Director(s). The panel will consist of individuals who are appropriately qualified in the disciplines relevant to the issues to be considered, and who are employed by the United States. The panel does not constitute an advisory committee within the meaning of sections 6(b) or 7(b) of the Act, or the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770).

(c) Report. The Secretary shall request that the panel submit a report of its evaluation within ninety (90) days after the appointment of the members of the panel. The Secretary shall place a copy of the report in the record of any relevant rulemaking undertaken pursuant to this Part and allow an appropriate time for public review and comment. If a panel is not established or fails to file a timely report, or if the Secretary determines that it is necessary to proceed without waiting for the panel's report, the Secretary may proceed in making any determination without such report.

(d) Other aid and assistance. Nothing herein precludes the Secretary from obtaining advice or other aid from any person or organization including NCI, NIEHS, and NIOSH.

1990.105—ADVISORY COMMITTEES

The Secretary may appoint an Advisory Committee, pursuant to sections 6(b) and 7 of the Act, and 29 CFR Part 1912, concerning any potential occupational carcinogen. The Secretary shall require the Advisory Committee to submit its recommendations to assist the Secretary in standard setting no later than ninety (90) days from the date of the Advisory Committee's appointment, unless extended by the Secretary for exceptional circumstances. If an Advisory Committee fails to file a timely report, the Secretary may proceed in standard setting activities without such a report.

1990.106—AMENDMENTS TO THIS POLICY

(a) Initation of review of this policy.—

(1) **Secretary's request.** No later than every three (3) years from the effective date of this Part, or from the last general review, the Secretary shall request the Director of NCI, the Director of NIEHS and/or the Director of NIOSH, to review this Part and render their opinions on whether significant scientific or technical advances made since the effective date of this Part warrant any amendment to this Part. The request shall ask that the answer be provided to the Secretary within one hundred twenty (120) days.

(2) **Recommendations by the institutes.** At any time, the Director of NCI, the Director of NIEHS and/or the Director of NIOSH may submit recommendatiuons to the Secretary for amendments to this Part whenever any of them believes that scientific or technical advances justify such amendments.

(3) **Petitions from the public.**

(i) Any interested person may petition the Secretary concerning amendments to this Part based upon substantial new issues or substantial new evidence.

(ii) For the purposes of this Part, substantial new evidence is evidence which differs significantly from that presented in establishing this Part, including amendments.

(iii) For the purposes of this Part, substantial new issues are issues which differ significantly from those upon which the Secretary has reached a conclusion in the rulemaking establishing this Part (including the conclusions reached in the preamble.)

(iv) Each petition to amend this part shall contain at least the following information:

(a) Name and address of petitioner;

(b) The provisions which the petitioner believes are inappropriate;

(c) All data, views and arguments relied upon by the petitioner; and

(d) A detailed statement and analysis as to why the petitioner believes that the data, views and arguments presented by petitioner:

(i) Constitute substantial new issues or substantial new evidence; and

(ii) Are so significant as to warrant amendment of this Part.

(b) Response to recommendations and petitions.

(1) **By the institutes.** Whenever any Director recommends an amendment ot this part, the

Secretary shall, within one hundred twenty (120) days after receipt of the recommendation, publish in the **Federal Register**, a notice which

(i) states the reasons why the Secretary has determined not to commence a rulemaking proceeding to amend this Part, in whole or in part, at that time; or

(ii) commences a rulemaking proceeding to consider amending this Part accordingly; or

(iii) appoints an Advisory Committee as provided for by 1990.105 of this Part and sections 6(b) and 7 of the Act.

(2) **By the public.** Within ninety (90) days, or as soon thereafter as possible, after receipt of a petition pursuant to section 1990.106(a)(3), the Secretary shall:

(i) refer the petition to the Director of NCI, the Director of NIEHS and/or the Director of NIOSH, in which case the provisions of 1990.106(a)(1) and (b)(1) are applicable; or

(ii) appoint an advisory committee;

(iii) deny the petition, briefly giving the reasons therefor: or

(iv) commence a rulemaking proceeding to consider amending this Part accordingly.

(3) **On the Secretary's motion.** At any time, the Secretary may, on his own motion, commence a rulemaking proceeding to amend this Part.

THE OSHA CANCER POLICY

1990.111—GENERAL STATEMENT OF REGULATORY POLICY

(a) This Part establishes the criteria and procedures under which substances will be regulated by OSHA as potential occupational carcinogens. Although the conclusive identification of "carcinogens" is a complex matter "on the frontiers of science," (IUD v. Hodgson 499 F. 2d 467, 474 (D.C. Cir. 1974)), responsible health regulatory policy requires that criteria should be specified for the identification of substances which should be regulated as posing potential cancer risks to workers.

(b) The criteria established by this Part are based on an extensive review of scientific data and opinions. The Part provides for amending these criteria in light of new scientific developments. Decisions as to whether any particular substance meets the criteria or not will be consistent with the policies and procedures established by the Part and will be based upon scientific evaluation of the evidence on that substance.

(c) This Part applies to individual substances, groups of substances, or combinations or mixtures of substances which may be found in workplaces in the United States. In individual rulemaking proceedings under this Part, the identity and range of substances and mixtures to be covered by the standard will be specified and the appropriateness of applying the avaliable evidence to the range of substances and mixtures proposed for regulation will be subject to scientific and policy review.

(d) Potential occupational carcinogens will be identified and classified on the basis of human epidemiological studies and/or experimental carcinogenesis bioassays in mammals. Positive results in short term tests will also be used as concordant evidence.

(e) Potential occupational carcinogens will be classified and regulated in accordance with the policy. The scientific evidence as to whether individual substances meet these criteria will be considered in individual rulemakings. The issues which may be considered in these rulemakings will be limited as specified herein.

(f) This policy provides for the classification of potential occupational carcinogens into two categories depending on the nature and extent of the available scientific evidence. The two categories of potential occupational carcinogens may be regulated differently.

(g) The policy establishes a procedure for setting priorities and making them public.

(h) Worker exposure to Category I Potential Carcinogens will be reduced primarily through the use of engineering and work practice controls.

[46 F.R. 5881, January 21, 1981.]

(i) Worker exposure to Category II Potential Carcinogens will be reduced as appropriate and consistent with the statutory requirements on a case-by-case basis in the rulemaking proceedings on individual substances. Any permissible exposure level so established shall be met primarily through engineering and work practice controls.

(j) The assessment of cancer risk to workers resulting from exposure to a potential occupational carcinogen will be made on the basis of available data. Because of the uncertainties and serious consequences to workers if the estimated risk is understated, cautious and prudent assumptions will be utilized to perform risk assessments.

[46 F.R. 5881, January 21, 1981.]

(k) Where the Secretary determines that one or more suitable substitutes exist for certain uses of Category I Potential Carcinogens that are less hazardous to humans, a no occupational exposure level shall be set for those uses, to be achieved solely through the use of engineering and work practice controls to encourage substitution. In determining whether a substitute is suitable, the Secretary will consider the technological and economic feasibility of the introduction of the substitute, including its relative effectiveness and other relevant factors, such as regulatory requirements and the time needed for an orderly transition to the substitute.

1990.112—CLASSIFICATION OF POTENTIAL CARCINOGENS

The following criteria for identification, classification and regulation of potential occupational carcinogens will be applied, unless the Secretary considers evidence under the provisions of 1990.143, 1990.144 and 1990.145 and determines that such evidence warrants an exception to these criteria.

(a) **Category I Potential Carcinogens.** A substance shall be identified, classified, and regulated as a Category I Potential Carcinogen if, upon scientific evaluation, the Secretary determines that the substance meets the definition of a potential occupational carcinogen in (i) humans, or (ii) in a single mammalian species in a long-term bioassay where the results are in concordance with some other scientifically evaluated evidence of a potential carcinogenic hazard, or (iii) in a single mammalian species in an adequately conducted long-term bioassay, in appropriate circumstances where the Secretary determines the requirement for concordance is not necessary. Evidence of concordance is any of the following: positive results for independent testing in the same or other species, positive results in short-term tests, or induction of tumors at injection or implantation sites.

(b) **Category II Potential Carcinogens.** A substance shall be identified, classified, and regulated as a Category II Potential Carcinogen if, upon scientific evaluation, the Secretary determines that: (i) the substance meets the criteria set forth in 1990.112(a), but the evidence is found by the Secretary to be only "suggestive" or (ii) the substance meets the criteria set forth in 1990.112(a) in a single mammalian species without evidence of concordance.

PRIORITY SETTING

1990.121—CANDIDATE LIST OF POTENTIAL OCCUPATIONAL CARCINOGENS

(a) Contents. The Secretary shall prepare a list of substances (the "Candidate List") which are reported to be present in any American workplace and which, on the basis of a brief scientific review of available data, may be considered candidates for further scientific review and possible regulation as Category I Potential Carcinogens or Category II Potential Carcinogens. For the purposes of this paragraph, "available data" means:

(1) The data submitted by any person;

(2) Any data referred to by the Secretary of HHS or by the Director of NIOSH, either in the latest list entitled "Suspected Carcinogens" or any other communicaton;

(3) Literature referred to in U.S. Public Health Service, Publication No. 149;

(4) Data summarized and reviewed in Monographs of the International Agency for Research on Cancer (IARC) of the World Health Organization;

(5) The Toxic Substances Control Act Inventory of Chemical Substances, published by the Community Mental Health Centers Extension Act of 1978, sec. 404(a)(9), 42 U.S.C. sec. 285.

(b) Tentative classification. The Secretary may tentatively designate substances on the Candidate List as candidates for classification as Category I Potential Carcinogens or as Category II Potential Carcinogens, or may list substances without a tentative designation, based on the brief scientific review of available data for the purpose of initiating a more extensive scientific review.

(c) No legal rights established. The inclusion or exclusion of any substance from the Candidate List shall not be subject to judicial review nor be the basis of any legal action, nor shall the exclusion of any substance from the list prevent the regulation of that substance as a potential occupational carcinogen. The inclusion of a substance on the Candidate List and its possible tentative designation as a Category I Potential Carcinogen or a Category II Potential Carcinogen therein do not reflect a final scientific determination that the substance is, in fact, a Category I Potential Carcinogen or a Category II Potential Carcinogen. It is a policy determination based on the brief scientific review that the Secretary should conduct a thorough review of all relevant scientific data concerning the substance.

1990.122—RESPONSE TO PETITIONS

Whenever the Secretary receives any information submitted in writing by any interested person concerning the inclusion or omission of any substance from the Candidate List, the Secretary shall briefly review the information and any other available data, as defined in 1990.121(a). The results of the Secretary's review shall be transmitted to the petitioner, together with a short statement of the Secretary's reasons therefor, and made public upon request.

1990.131—PRIORITY LISTS FOR REGULATING POTENTIAL OCCUPATIONAL CARCINOGENS

The Secretary shall establish two priority lists for regulating potential occupational carcinogens. One list should include approximately ten (10) candidates for rulemaking as Category I Potential Carcinogens; the other approximately ten (10) candidates for rulemaking as Category II Potential Carcinogens. The order of placement of substances on these lists will not reflect the Secretary's determination of the exact order in which these substances should be regulated in rulemaking proceedings but rather a policy determination that the Secretary plans to address some or all of these substances prior to proceeding with a thorough scientific review of data concerning other substances on the Candidate List. The inclusion or exclusion of any substance on these lists shall not be subject to judicial review or be the basis for any legal action. The Secretary may regulate a potential occupational carcinogen which has not been placed on these lists. The inclusion of a substance on either of these lists does not reflect a final scientific determination that the substance is, in fact, a Category I Potential Carcinogen or a Category II Potential Carcinogen.

1990.132—FACTORS TO BE CONSIDERED

(a) The setting of priorities is a complex matter which requires subjective and policy judgments. It is not appropriate to establish a rigid formula or to assign predetermined weight to each factor. The identification of some of the elements is to guide the OSHA staff and inform the public on the development of priorities. It is not intended to create any legal rights with respect to the setting of priorities.

(b) Some factors which may be taken into account in setting priorities for regulating potential occupational carcinogens, when such data are available, are:

(1) The estimated number of workers exposed;

(2) The estimated levels of human exposure;

(3) The levels of exposure to the substance which have been reported to cause an increased incidence of neoplasms in exposed humans, animals or both;

(4) The extent to which regulatory action could reduce not only risks of contracting cancer but also other occupational and environmental health hazards;

(5) Whether the molecular structure of the substance is similar to the molecular structure of another substance which meets the definition of a potential occupational carcinogen;

(6) Whether there are substitutes that pose a lower risk of cancer or other serious human health problems, or available evidence otherwise suggests that the social and economic costs of regulation would be small; and

(7) OSHA will also consider its responsibilities for dealing with other health and safety hazards and will consider the acions being taken or planned by other governmental agencies in dealing with the same or similar health and safety hazards.

1990.133—PUBLICATION

(a) The Secretary shall publish the Candidate List in the **Federal Register** at least annually.

(b) The Secretary shall publish the Priority Lists in the **Federal Register** at least every six months and may seek public comment thereon.

(c) The Secretary may periodically publish in the **Federal Register** a notice requesting information concerning the classification and establishment of priorities for substances on the Candidate List together with a brief statement describing the type of information being sought.

REGULATION OF POTENTIAL OCCUPATIONAL CARCINOGENS

1990.141—ADVANCE NOTICE OF PROPOSED RULEMAKING

(a) Within thirty (30) days after OSHA initiates a study concerning the economic and/or technological feasibility of specific standards that might be applied in the regulation of a potential occupational carcinogen, the Secretary will normally publish, in the **Federal Register**, a notice which includes at least the following:

(1) The name of the substance(s).

(2) The scope of the study, including where possible, (i) affected industries, (ii) levels of exposure being studied, (iii) the anticipated completion date of the study;

(3) A brief summary of the available data on health effects;

(4) An estimate of when the Secretary anticipates the issuance of a proposal;

(5) An invitation to interested parties to provide relevant information;

(6) A statement that persons wishing to provide OSHA with their own study should complete it within 30 days after the anticipated proposal date; and

(7) A statement of the procedural requirements that must be met before substantial new issues or substantial new evidence will be considered in the proceeding pursuant to § 1990.145.

(b) Where the Secretary determines to discontinue a feasibility study, the Secretary should publish, within 30 days, a notice in the **Federal Register** so indicating.

1990.142—INITIATION OF A RULEMAKING

Where the Secretary decides to regulate a potential occupational carcinogen, the Secretary shall initiate a rulemaking proceeding in accordance with one of the following procedures, as appropriate.

(a) Notice of proposed rulemakings (Section 6(b) of the Act)

(1) **General**. The Secretary may issue a notice of proposed rulemaking in the **Federal Regis-**

ter, pursuant to Section 6(b) of the Act and Part 1911 of this Chapter. The notice shall provide for no more than a sixty (60) day comment period, and may provide for a hearing, which shall be scheduled for no later than one hundred (100) days after publication of the Notice of Proposed Rulemaking. The commencement of the hearing may be postponed once, for no more than thirty (30) days, for good cause shown.

(2) **Provisions of the proposed standard for Category I Potential Carcinogens.** Whenever the Secretary issues a notice of proposed rulemaking to regulate a substance as a Category I Potential Carcinogen:

(i) The propsoed standard shall contain at least provisions for scope and application, definitions, notification of use, a permissable exposure limit, monitoring, regulated areas, methods of compliance including the development of a compliance plan, respiratory protection, protective clothing and equipment, housekeeping, waste disposal, hygiene facilities, medical surveillance, employee information and training, signs and labels, recordkeeping, and employee observation of monitoring as set forth in § 1990.151, unless the Secretary explains why any or all such provisions are not appropriate;

(ii) The model standard set forth in § 1990.151 shall be used as a guideline, and

(iii) The permissible exposure limit shall be achieved primarily through engineering and work practice controls except that if a suitable substitute is available for one or more uses no occupational exposure shall be permitted for those uses.

[46 F.R. 5881, January 21, 1981.]

(3) **Provisions of the proposed standard for Category II Potential Carcinogens.** Whenever the Secretary issues a Notice of Proposed Rulemaking to regulate a substance as a Category II Potential Carcinogen:

(i) The proposed standard shall contain at least provisions for scope and application, definitions, notification of use, monitoring, respiratory protection, protective clothing and equipment, housekeeping, waste disposal, medical surveillance, employee information and training, recordkeeping and employee observation of monitoring as set forth in § 1990.151, unless the Secretary explains why any or all such provisions are not appropriate; and

(ii) The model standard set forth in § 1990.151 shall be used as a guideline; and

(iii) Worker exposure to Category II Potential Carcinogens will be reduced as appropriate and consistant with the statutory requirements on a case-by-case basis in the individual rulemaking proceedings. Any permissible exposure level so established shall be met primarily through engineering and work practice controls.

(b) Emergency temporary standards. (Section 6(c) of the Act).

(1) **General.** The Secretary may issue an Emergency Temporary Standard (ETS) for a Category I Potential Carcinogen in accordance with section 6(c) of the Act.

(2) **Provisions of the ETS.**

(i) The ETS shall contain at least provisions for scope and application, definitions, notification of use, a permissible exposure limit, monitoring, methods of compliance including the development of a compliance plan, respiratory protection, protective clothing and equipment, housekeeping, waste disposal, medical surveillance, employee information and training, signs and labels, recordkeeping and employee observation of monitoring unless the Secretary explains why any or all such provisions are not appropriate.

(ii) The model standard set forth in – 1990.152 shall be used as a guideline.

(iii) The permissible exposure limit shall be achieved through any practicable combination of engineering controls, work practice controls and respiratory protection.

[46 F.R. 5881, January 21, 1981.]

1990.143—GENERAL PROVISIONS FOR THE USE OF HUMAN AND ANIMAL DATA

Human and animal data which are scientifically evaluated to be positive evidence for carcinogenicity including the following policies shall be uniformly relied upon for the identification of potential occupational carcinogens. Arguments challenging the following provisions or their application to specific substances will be considered in individual rulemaking proceedings only if the evidence presented in support of the arguments meets the criteria for consideration specified in § 1990.144 or § 1990.145.

(a) Positive human studies. Positive results obtained in one or more human epidemiologic studies will be used to establish the qualitative inference of carcinogenic hazards to workers.

(b) Positive animal studies. Positive results obtained in one or more experimental studies conducted in one or more mammalian species will be used to establish the qualitative inference of carcinogenic hazard to workers. Arguments that positive results obtained in mammalian species should not be relied upon will be considered only if evidence is presented which meets the criteria for consideration specified in § 1990.144(c) or 1990.144(f).

(c) Non-positive human studies. Positive results in human or mammalian studies generally will be used for the qualitative identification of potential occupational carcinogens, even where non-positive results from human studies exist. Such non-positive results will be considered by the Secretary only if the studies or results meet the criteria set forth in § 1990.144(a).

(d) Non-positive animal studies. Positive results in one or more mammalian studies will be used for the qualitative identification of potential occupational carcinogens, even where non-positive studies exist in other mammalian species. Where non-positive and positive results exist in studies in the same species, the non-positive results will be evaluated.

(e) Spontaneous tumors. Positive results in human or mammalian studies for the induction or acceleration of induction of tumors of a type which occurs "spontaneously" in unexposed individuals will be used for the qualitative identification of potential occupational carcinogens.

(f) Routes of exposure.

(1) Positive results in studies in which mammals are exposed via the oral, respiratory or dermal routes will be used for the qualitative identification of potential occupational carcinogens, whether tumors are induced at the site of application or distant sites.

(2) Positive results in studies in which mammals are exposed via any route of exposure and in which tumors are induced at sites distant from the site of administration will be used for the qualitative identification of potential occupational carcinogens.

(3)

(i) Positive results in mammalian studies in which tumors are induced only at the site of administration, in which a substance or mixture of substances is administered by routes other than oral, respiratory or dermal, will be used as "concordant" evidence that a substance is a potential occupational carcinogen.

(ii) Arguments that such studies should not be relied upon will be considered only if evidence which meets the criteria set forth in § 1990.144(b) is provided.

(g) Use of high doses in animal testing. Positive results for carcinogenicity obtained in mammals exposed to high doses of a substance will be used to establish the qualitative inference of carcinogenic hazard to workers. Arguments that such studies should not be relied upon will be considered only if evidence which meets the criteria set forth in § 1990.144(d) is provided.

(h) "Threshold" or "No-effect" Levels. No determination will be made that a "threshold" or "no-effect" level of exposure can be established for a human population exposed to carcinogens in general, or to any specific substance.

(i) Benign tumors. Results based on the induction of benign or malignant tumors, or both, will be used to establish a qualitative inference of carcinogenic hazard to workers. Arguments that substances that induce benign tumors do not present a carcinogenic risk to workers will be considered only if evidence that meets the criteria set forth in § 1990.144(e) is provided.

(j) Statistical evaluation. Statistical evaluation will be used in the determination of whether results in human, animal or short-term studies provide positive evidence for carcinogenicity, but will not be the exclusive means for such evaluation.

(k) Carcinogenicity of metabolites. A substance which is metabolized by mammals to yield one or more potential occupational carcinogens will itself be identified and classified as a potential occupational carcinogen, whether or not there is direct evidence that it induces tumors in humans or experimental animals. Evidence for such metabolism will normally be derived from *in vivo* studies in mammals. In appropriate circumstances, evidence may be derived from *in vitro* studies of mammalian tissues or fractions thereof. Arguments that evidence from *in vivo* metabolic studies in mammals is not relevant to the inference of carcinogenic hazard to humans will be considered only if such evidence meets the criteria set forth in § 1990.144(c).

1990.144—CRITERIA FOR CONSIDERATION OF ARGUMENTS ON CERTAIN ISSUES

Arguments on the following issues will be considered by the Secretary in identifying or classifying any substance pursuant to this Part, if evidence for the specific substance subject to the rulemaking conforms to the following criteria. Such arguments and evidence will be evaluated based upon scientific and policy judgments.

[46 F.R. 5881, January 21, 1981.]

(a) Non-positive results obtained in human epidemiologic studies. Non-positive results obtained in human epidemiologic studies regarding the substance subject to the rulemaking or to a similar or closely related substance will be considered by the Secretary only if they meet the following criteria:

> *Criteria.* (i) The epidemiologic study involved at least 20 years' exposure of a group of subjects to the substance and at least 30 years' observation of the subjects after initial exposure;
>
> (ii) Documented reasons are provided for predicting the site(s) at which the substance would induce cancer if it were carcinogenic in humans; and
>
> (iii) The group of exposed subjects was large enough for an increase in cancer incidence of 50% above that in unexposed controls to have been detected at any of the predicted sites.

Arguments that non-positive results obtained in human epidemiologic studies should be used to establish numerical upper limits on potential risks to humans exposed to specific levels of a substance will be considered only if criteria (i) and (ii) are met and, in addition:

> (iv) Specific data on the level of exposure of the group of workers are provided, based either on direct measurements made periodically throughout the period of exposure, or upon other data which provide reliable evidence of the magnitude of exposure.

(b) Tumors induced at site of administration. Arguments that tumors at the site of administration should not be considered will be considered only if:

> (i) The route of administration is not oral, respiratory or dermal; and
>
> (ii) Evidence is provided which establishes that induction of local tumors is related to the physical configuration or formulation of the material administered (e.g., crystalline form or dimensions of a solid material, or matrix of an impregnated implant) and that tumors are not induced when the same material is administered in a different configuration or formula.

(c) Metabolic differences. Arguments that differences in metabolic profiles can be used to demonstrate that a chemical found positive in an experimental study in a mammalian species would pose no potential carcinogenic risk to

exposed workers will be considered by the Secretary only if the evidence presented for the specific substance subject to the rulemaking meets the following criteria:

Criteria. (i) A complete metabolic profile, including identities of trace metabolites, is presented for the experimental animal species;

(ii) A complete metabolic profile, including identities of trace metabolites, is available for a human population group representative of those who are occupationally exposed;

(iii) Documented evidence is provided for ascribing the carcinogenic activity of the substance in the test animal species to metabolite(s) produced only in that species and not in humans; and

(iv) Documented evidence is provided to show that other metabolites produced also in humans have been adequately tested and have not been shown to be carcinogenic.

(d) Use of high doses in animal testing. Arguments that positive results obtained in carcinogenesis bioassays with experimental animals subjected to high doses of a substance are not relevant to potential carcinogenic risks to exposed workers will be considered by the Secretary only if the evidence for the specific substance subject to the rulemaking meets the following criteria:

Criteria. (i) Documented evidence is presented to show that the substance in question is metabolized by the experimental animal species exposed at the dose levels used in the bioassay(s) to metabolic products which include one or more that are not produced in the same species at lower doses.

(ii) Documented evidence is presented to show that the metabolite(s) produced only at high doses in the experimental animal species are the ultimate carcinogen(s) and that the metabolites produced at low doses are not also carcinogenic; and

(iii) Documented evidence is presented to show that the metabolite(s) produced only at high doses in the experimental animal species are not produced in humans exposed to low doses.

(e) Benign tumors. The Secretary will consider evidence that the substance subject to the rulemaking proceeding is capable only of inducing benign tumors in humans or experimental animals provided that the evidence for the specific substance meets the following criteria:

Criteria. (i) Data are available from at least two well-conducted bioassays in each of two species of mammals (or from equivalent evidence in more than two species);

(ii) Each of the bioassays to be considered has been conducted for the full lifetime of the experimental animals;

(iii) The relevant tissue slides are made available to OSHA or its designee and the diagnoses of the tumors as benign are made by at least one qualified pathologist who has personally examined each of the slides and who provides specific diagnostic criteria and descriptions; and

(iv) All of the induced tumors must be shown to belong to a type which is known not to progress to malignancy or to be at a benign stage when observed. In the latter case, data must be presented to show that multiple sections of the affected organ(s) were adequately examined to search for invasion of the tumor cells into adjacent tissue, and that multiple sections of other organs were adequately examined to search for tumor metastases.

(f) Indirect mechanisms. The Secretary will consider evidence that positive results obtained in a carcinogenesis bioassay with experimental animals are not relevant to a determination of a carcinogenic risk to exposed workers, if the evidence demonstrates that the mechanism by which the observed tumor incidence is effected is indirect and would not occur if humans were exposed. As examples, evidence will be considered that a substance causes a carcinogenic effect by augmenting caloric intake or that the carcinogenic effect from exposure to a substance is demonstrated to be the result of the presence of a carcinogenic virus and it is demonstrated that, in either case, the effect would not take place in the absence of the particular carcinogenic virus or the augmented caloric intake.

1990.145—Consideration of substantial new issues or substantial new evidence

(a) Substantial new issues. Notwithstanding any other provision of this Part, the Secretary will consider in a rulemaking proceeding on a specific substance any substantial new issues upon which the Secretary did not reach a conclusion in the rulemaking proceeding(s) underlying this Part including conclusions presented in the preamble.

(b) Substantial new evidence. Nothwithstanding any other provision of this Part, the Secretary will consider in a rulemaking proceeding on a specific substance any arguments, data or views which he determines are based upon substantial new evidence which may warrant the amendment of one or more provisions of this Part. For the purposes of this Part, "substantial new evidence" is evidence directly relevant to any provision of this Part and is based upon data, views or arguments which differ significantly from those presented in establishing this Part, including amendments thereto.

(c) Petitions for consideration of substantial new evidence.

(1) Petition. Any interested person may file a written petition with the Secretary to consider "substantial new issues" or one or more "substantial new issues" which contains the information specified in paragraph (c)(2) of this section. The Secretary shall treat such a petition as a request to amend this Part, as well as a petition to consider "substantial new evidence".

(2) Contents. Each petition for consideration of "substantial new evidence" or one or more "substantial new issues" shall contain at least the following information:

(i) Name and address of the petitioner;

(ii) All of the data, views and arguments that the petitioner would like the Secretary to consider;

(iii) The provision or provisions that petitioner believes are inappropriate or should be added to this Part in light of the new data, views, and arguments;

(iv) A statement which demonstrates that the data, views, and arguments relied upon by petitioners are directly relevant to the substance or class of substances that is the subject of a rulemaking or an Advance Notice of Proposed Rulemaking;

(v) A detailed statement and anylysis as to why the petitioner believes that the data, views, and arguments presented by the petitioner:

(a) differ significantly from those presented in the proceeding(s) which establish this Part;

(b) are so substantial as to warrant amendment of this Part; and

(c) constitute a new issue or new evidence within the meaning of paragraphs (a) and (b) of this section.

(3) Deadline for petitions.

(i) Petitions which comply with paragraph (c) above, shall be filed in accordance with the schedule set forth in the Advanced Notice of Proposed Rulemaking.

(ii) In extraordinary cases the Secretary may consider evidence submitted after the deadline if the petitioner establishes that the evidence relied upon was not available and could not have reasonably been available in whole or substantial part by the deadline and that it is being submitted at the earliest possible time.

(d) Secretary's response.

(1) The Secretary shall respond to petitions under this paragraph in accordance with § 1990.106.

(2) Whenever the Secretary determines that the "substantial new issue" or the "substantial new evidence" submitted under this paragraph is sufficient to initiate a proceeding to amend this Part, the Secretary shall:

(i) Issue a notice to consider amendment to this Part and not proceed on the rulemaking concerning the individual substance until completion of the amendment proceeding; or

(ii) Issue a notice to consider amendment to this Part and consolidate it with the proceeding on the individual substance.

1990.146—ISSUES TO BE CONSIDERED IN THE RULEMAKING

Except as provided in § 1990.145, after issuance of the advance notice of rulemaking, the proceedings for individual substances under this Part shall be limited to consideration of the following issues:

(a) Whether the substance, group of substances or combination of substances subject to the proposed rulemaking is appropriately considered in a single proceeding;

(b) Whether the substance or group of substances subject to the rulemaking meets the definition of a potential occupational carcinogen set forth in § 1990.103, including whether the scientific studies are reliable;

(c) Whether the available data can appropriately be applied to the substance, group of substances or combination of substances covered by the rulemaking;

(d) Whether information, data, and views that are submitted in accordance with § 1990.144 are sufficient to warrant an exception to this Part;

(e) Whether the data, views and arguments that are submitted in accordance with § 1990.145 are sufficient to warrant amendment of this Part;

(f) Whether the potential occupational carcinogen meets the criteria for a Category I Potential Carcinogen or a Category II Potential Carcinogen.

(g) The environmental impact arising from regulation of the substance;

(h) Any issues required by statute or executive order;

(i) The determination of the level to control exposures to Category I Potential Carcinogens primarily through the use of engineering and work practice controls including technological and economic considerations.

[46 F.R. 5881, January 21, 1981.]

(j) The determination of the appropriate employee exposure level, consistent with the Act's requirements for Category II Potential Carcinogens;

(k) Whether suitable substitutes are available for one or more us of Catgory I Potential Carcinogens and; if so, the no occupational exposure level to be achieved solely with engineering and work practice controls and other issues relevant to substitution; and

(l) Whether the provisions of the proposal and of § 1990.151 and § 1990.152 (model standards) are appropriate, except as limited by § 1990.142 and whether additional regulatory provisions may be appropriate.

1990.147—FINAL ACTION

(a) Within one hundred twenty (120) days from the last day of any hearing or ninety (90) days from the close of any post hearing comment period, whichever occurs first, the Secretary shall publish in the Federal Register:

(1) A final standard based upon the record in the proceeding; or

(2) A statement that no final standard will be issued, and the reasons therefor, or

(3) A statement that the Secretary intends to issue a final rule, but that he is unable to do so at the present time, including:

(i) The reasons therefor; and

(ii) The date by which the standard will be published, which may not exceed one hundred twenty (120) days thereafter.

(iii) The Secretary may issue no more than one such notice, unless the Secretary determines that *(a)* new evidence which was unavailable during the rulemaking proceedings has just become available; *(b)* the evidence is so important that a final rule could not reasonably be issued without this evidence, and; *(c)* the record is reopened for receipt of comments and/or a hearing on this evidence. This paragraph does not require the Secretary to consider any evidence which is submitted after the dates established for the submission of evidence.

(b) The failure of the Secretary to comply with the required timeframes shall not be a basis to set aside any standard or to require the issuance of a new proposal on any individual substance.

(c) The final standard shall state whether the substance or group of substances subject to the rulemaking is classified as a Category I Potential Carcinogen or as a Category II Potential Carcinogen. If the classification differs from that in the notice of proposed rulemaking, the Secretary shall explain the reasons for the change in classification in the preamble to the final standard.

(d) If the substance is classified as a Category I Potential Carcinogen, the final standard shall conform to the provisions of section 1990.142(a)(2)(iii). If the final standard contains other provisions that substantially differ from the proposed provisions, the Secretary shall explain the reasons for the changes in the preamble to the final standard.

(e) If the substance is classified as a Category II potential carcinogen, the final standard shall conform to the provisions of section 1990.142(a)(3)(iii). If the final standard contains other provisions that substantially differ from the proposed provisions, the Secretary shall explain the reasons for the changes in the preamble to the final standard.

(f) If the substance is classified as a Category II potential carcinogen, the Secretary shall notify the applicable federal and state agencies, including the Administrator of EPA, the Director of NCI, the Director of NIEHS, the Director of NIOSH, the Commissioner of FDA and the Chairperson of CPSC of such determination and request that the applicable agencies engage in, or stimulate, further research pursuant to their legislative authority, to develop new and additional scientific data.

(g) If, after a rulemaking, the Secretary determines that the substance under consideration should not be classified as a Category II potential carcinogen, the Secretary shall publish a notice of this determination in the Federal Register, together with the reasons therefor.

MODEL STANDARDS

1990.151—MODEL STANDARD PURSUANT TO SECTION 6(b) OF THE ACT

Occupational Exposure to _______; Permanent Standard (Insert section number of standard)

(a) Scope and application.

(1) **General.** This section applies to all occupational exposures to _______ or to (specify those uses or classes of uses of _______ [Chemical Abstracts Service Registry Number 0000] which are covered by the standard, including, where appropriate, the type of exposure to be regulated by the standard) except as provided in paragraph (a)(2).

(2) **Exemptions.** This section does not apply to (insert those uses or classes of uses _______ which are exempted from compliance with the standard, including, where appropriate,

(i) workplaces where exposure to _______ results from solid or liquid mixtures containing a specified percentage of _______ or less;

(ii) workplaces where another Federal agency is exercising statutory authority to prescribe or enforce standards or regulations affecting occupational exposure to ________;

(iii) workplaces which are appropriately addressed in a separate standard).

(b) Definitions.

"________" means (definition of the substance, group of substances, or combination of substances, to be regulated).

"Authorized person" means any person specifically authorized by the employer whose duties require the person to enter regulated areas or any person entering such an area as a designated representative of employees for the purpose of exercising the opportunity to observe monitoring procedures under paragraph (r) of this section.

"Action level" means an airborne concentration of ________ of (insert appropriate level of exposure).

Note.—Where appropriate, consider an action level as a limitation on requirements for periodic monitoring (para. (e)(3)), medical surveillance (para. (n)), training (para. (o)), labels (para. (p)(3)), and other provisions.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health, and Health Services, or designee.

"Emergency" means in any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which may result in a release of ________ which is (insert appropriate quantitative or qualitative level of release which constitutes an emergency).

. "OSHA Area Office" means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

(c) Permissible exposure limits provisions.

(1) Inhalation.

(i) Time weighted average limit (TWA). Within (insert appropriate time period) of the effective date of this section, the employer shall assure that no employee is exposed to an airborne concentration of—in excess of; (insert apropriate exposure limit or when it is determined by the Secretary that there are available suitable substitutes for uses or classes of uses that are less hazardous to humans, the proposal shall permit no occupational exposure) as an eight (8)-hour-time-weighted average.

(Where the Secretary finds that suitable substitutes for—may exist, the determination of the—level shall include consideration of the availability, practicability, relative degree of hazard, and economic consequences of the substitutes.)

(ii) Ceiling limit. (If appropriate.) Within (insert appropriate time period) of the effective date of this section, the employer shall assure that no employee is exposed to an airborne concentration of—in excess of: (insert exposure limit) as averaged over any: (insert appropriate time period) during the working day.

(2) Dermal and eye exposure. (As appropriate.)

(i) Within (insert appropriate time period) of the effective date of this section, the employer shall (If eye exposure to ___ does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse health affects of eye exposure to ___ if any. If eye exposure creates a risk of cancer, insert exposure level or criteria which represents the level of eye exposure to ___.

(ii) Within (insert appropriate time period) of the effective date of this section, the employer shall (If skin exposure to—does not create a risk of cancer, insert exposure level of criteria which will prevent other adverse health effects of skin exposure to—if any. If skin exposure creates a risk of cancer, insert exposure level or criteria which represents the level of skin exposure to ___).

[46 F.R. 5882, January 21, 1981.]

(3) (If appropriate, specify limitations or prohibitions on consumption, storage or use of food, beverages, smoking materials, etc. in certain workplaces.)

(4) **Other restrictions.** The employer shall assure that there is no occupational exposure to ________ from the following uses or classes of uses: (Where the Secretary determines, in the proposal or upon the record of the public rulemaking, that there are available substitutes in certain applications where ________ might otherwise be used, the Secretary here shall specify that no occupational exposure to ________ shall be permitted in those circumstances and uses, listing those circumstances or uses and including appropriate transitional provisions. Where the Secretary finds that substitutes for ________ exist, the determination of their suitability shall include consideration of the availability, practicability, relative degree of hazard, and economic consequences of the substitutes.)

(The preceding paragraph 1990.151(c) on permissible exposure limit provisions is for Category 1 Potent Cnogens. Workerotre to Category II Potential Carcinogens will be reduced as appropriate and consistent with the statutory requirements on a case-by-case basis in the individual rulemaking proceedings. Any permissible exposure level so established shall be met primarily through engineering and work practic controls. See § 1990.142(a)(3).)

(d) Notification of use and emergencies.

(1) **Use.** Within (insert appropriate time period and additional information requirements if appropriate) of the effective date of this standard or within thirty days of the introduction of ________ into the workplace, every employer who has a place of employment in which ________ is present shall report the address and location of each place of employment to the OSHA Area Office and an estimate of the number of employees exposed.

(2) **Emergencies.** Emergencies, and the facts obtainable at that time, shall be reported within (insert appropriate number) hours of, or during the first federal working day after, the time the employer becomes aware of the emergency to the OSHA Area Office, whichever is longer. Upon request of the OSHA Area Office, the employer shall submit additional information in writing relevant to the nature and extent of employee exposures and measures taken to prevent future emergencies of a similar nature.

(e) Exposure monitoring.

(1) **General.**

(i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to ________over an eight (8) hour period. (Modify the time period as appropriate to be practical in the relevant industries yet reasonably representative of full shift exposures.) Monitoring of exposure levels required under this paragraph shall be made as follows: (insert method or alternative methods to be used to meet the requirements of this paragraph.

(ii) For the purpose of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) **Initial monitoring.** Each employer who has one or more workplaces where (specify the types of workplaces subject to the monitoring requirement) shall, within (insert appropriate period) of the effective date of this section (insert requirements for initial monitoring, as appropriate).

(3) **Frequency.** (Insert, if appropriate, provisions prescribing the minimum frequency at which monitoring must be repeated, the conditions under which such frequency must be increased or may be reduced, and conditions under which such routine monitoring may be discontinued (for example, where the action level is not exceeded). Where appropriate, specify different frequency requirements for certain types of workplaces where, for example, exposure levels are subject to greater or less variability.)

(4) **Additional monitoring.** (Insert, if appropriate, provisions for monitoring, in addition to the requirements (if any) of paragraph (e)(3). This may include a production, process, control or personnel change which might result in new or additional exposure to ________, or when-

ever the employer has any other reason to suspect a change which might result in new or additional exposures to ________.)

(5) Employee notification.

(i) Within (insert appropriate period) after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limits, the employer shall include in the written notice a statement that the permissible exposure limits were exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limits.

(6) Accuracy of measurement. (Insert requirements for accuracy of methods of measurement or detection used to comply with the paragraph).

(f) Regulated areas.

(1) Within (insert appropriate time period) of the effective date of this section, the employer shall, where practicable, establish regulated areas where ________ concentrations are in excess of the permissible exposure limits.

(2) Regulated areas shall be demarcated and segregated from the rest of the workplace, in any manner that minimizes the number of persons who will be exposed to ________.

(3) Access to regulated areas shall be limited to authorized persons or to persons otherwise authorized by the Act or regulations issued pursuant thereto.

(4) The employer shall assure that in the regulated area, food or beverages are not present or consumed, smoking products are not present or used, and cosmetics are not applied (except that these activities may be conducted in the lunchroom, change rooms and showers required under paragraph (m)(1)-(m)(3) of this section).

(g) Methods of compliance.

(1) Engineering and work practice controls.

(i) The employer shall institute engineering or work practice controls to reduce and maintain employee exposures to ________ to or below the permissible exposure limits, except to the extent that the employer establishes that such controls are not feasible.

(ii) Engineering and work practice controls shall be implemented to reduce exposures even if they will not be sufficient to reduce exposures to or below the permissible exposure limits.

(2) Compliance program.

(i) Within (insert appropriate period) of the effective date of this section the employer shall establish and implement a written program to reduce exposures to or below the permissible exposure limits by means of engineering and work practice controls, as required by paragraph (g)(1) of this section.

(ii) Written plans for these compliance programs shall include at least the following:

(a) A description of each operation or process resulting in employee exposure to ________;

(b) Engineering plans and other studies contemplated or used to determine the controls for each process;

(c) A report of the technology considered or to be considered in meeting the permissible exposure limits;

(d) A detailed schedule for the implementation of engineering or work practice controls; and

(e) Other relevant information reasonably requested by OSHA.

(iii) Written plans for such a program shall be submitted, upon request, to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, or any affected employee or designated representative.

(iv) The plans required by this paragraph shall be revised and updated periodically to reflect the current status of the program.

(h) Respiratory protection.

(1) **General.** The employer shall assure that respirators are used where required pursuant to this section to reduce employee exposures to or below the permissible exposure limits and in emergencies. Compliance with the permissible exposure limits may not be achieved by the use of respirators except:

(i) During the time period necessary to install or implement feasible engineering and work practice controls; or

(ii) In work operations in which the employer establishes that engineering and work practice controls are not feasible; or

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limits; or

(iv) In emergencies.

(2) **Respirator selection.**

(i) Where respiratory protection is required under this section, the employer shall select and provide at no cost to the employee, the appropriate type of respirator from Table 1 below and shall assure that the employee wears the respirator provided.

Table 1.—Respiratory Protection for ________

(The table will contain a listing of the appropriate type of respirator for various conditions of exposure to ________).

(ii) The employer shall select respirators from those approved by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11.

(3) **Respirator program.**

(i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134(b), (d), (e), and (f).

(ii) Employees who wear respirators shall be allowed to wash their face and respirator facepeice to prevent potential skin irritation associated with respirator use.

(iii) The employer shall assure that the respirator issued to each employee is properly fitted (as appropriate, indicate the requirement for a qualitative or quantitative respirator fit testing program).

(i) Emergency situations.

(1) **Written plans.**

(i) A written plan for emergency situations shall be developed for each workplace where ________ is present. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped with respirators as required in paragraph (h) of this section and other necessary personal protective equipment as required in paragraph (j) until the emergency is abated.

(2) **Alerting employees.**

(i) **Alarms.** Where there is the possibility of employee exposure to ________ due to the occurance of an emergency, a general alarm shall be installed and maintained to promptly alert employees of such occurrences.

(ii) **Evacuation.** Employees not engaged in correcting the emergency shall be restricted from the area and shall not be permitted to return until the emergency is abated.

(j) Protective clothing and equipment.

(1) **Provision and use.** Where employees are exposed to eye or skin contact with ________ (insert criteria which trigger this requirement as appropriate), the employer shall, within (insert appropriate time period) of the effective date of this section provide at no cost to such employees, and assure that such employees wear, appropriate protective clothing or other equipment in accordance with 29 CFR 1910.132 and .133 to protect the area of the body which may come in contact with ________.

(2) Cleaning and replacement.

(i) The employer shall clean, launder, maintain, or replace protective clothing and equipment required to maintain their effectiveness.

(k) Housekeeping

(1) General. The employer shall, within appropriate time period of the effective date of this section, implement a housekeeping program to minimize accumulation of _______.

(2) Specific provisions. The program shall include (insert appropriate elements):

(i) Periodic scheduling of routine housekeeping;

(ii) Provision for periodic cleaning of dust collection system;

(iii) Provision for maintaining clean surfaces;

(iv) Provision for assigning personnel to housekeeping procedures; and

(v) Provision for informing employees about the housekeeping program.

(l) Waste disposal.

(1) General. The employer shall assure that no waste material containing _______ is dispersed into the workplace, to the extent practicable.

(2) The employer shall lable, or otherwise inform employees who may contact waste material containing _______, the contents of such waste material.

(3) (Insert specific disposal methods, as appropriate.)

(m) Hygiene facilities and practices.

Where employees are exposed to airborne concentrations of _______ in excess of the permissible exposure limits specified in paragraph (c)(1), or where employees are required to wear protective clothing or equipment pursuant to paragraph (j) of this section, or where otherwise found to be appropriate, the following facilities shall be provided by the employer for the use of those employees and the employer shall assure that the employees use the facilities provided.

[Specify appropriate hygiene facilities and practices such as]:

(1) Change rooms. The employer shall provide clean change rooms in accordance with 29 CFR 1910.141(e).

(2) Showers.

(i) The employer shall provide shower facilities in accordance with 29 CFR 1910.141(d)(3).

(ii) The employer shall assure that employees exposed to _______ shower at the end of the work shift.

(3) Lunchrooms. (if appropriate or other suitable requirements depending on the circumstances). Whenever food or beverages are consumed in the workplace, the employer shall provide lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees exposed to _______

(n) Medical surveillance.

(1) General.

(i) The employer shall institute a program of medical surveillance for (specify the types of employees subject to the medical surveillance requirement, for example, by specifying the level, duration, and frequency of exposure to _______ which make medical surveillance appropriate for individual employees). The employer shall provide each such employee with an opportunity for medical examinations and tests in accordance with this paragraph.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

(2) Initial examinations. Within (insert appropriate time period) of the effective date of this section or thereafter at the time of initial assignment, the employer shall provide each employee specified in paragraph (n)(1) of this section an opportunity for a medical examination, including at least the following elements:

(i) A work history and a medical history which shall include: (insert specific areas to be covered pertinent to the health hazard posed by ________.)

(ii) A physicial examination which shall include: (insert specific tests, procedures, etc., pertinent to the health hazards posed by ________.) Where appropriate, provide that the examining physician shall conduct such additional examinations and tests as are needed according to his professional judgement).

Note.—Where appropriate, require or permit different medical protocols, or different frequencies of medical examinations, for separate sub-populations of employees covered under paragraph (n)(1).

(3) Periodic examinations.

(i) The employer shall provide the examinations specified below in this subparagraph at least (insert appropriate time) for all employees specified in paragraph (n)(1) of this section: (insert appropriate medical protocol for periodic examinations).

(ii) If an employee has not had the examinations prescribed in paragraph (n)(3)(i) of this section within (insert appropriate time period) prior to termination of employment, the employer shall make such examination available to the employee upon such termination.

(4) Additional examinations. If the employee for any reason develops signs or symptoms commonly associated with exposure to ________, the employer shall provide appropriate examination and emergency medical treatment.

(5) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's actual or representative exposure level;

(iv) The employee's anticipated or estimated exposure level (for preplacement examinations or in cases of exposure due to an emergency);

(v) A description of any personal protective equipment used or to be used; and

(vi) The names and addresses of physicians who, under the sponsorship of the employer, provided previous medical examinations of the affected employee, if such records are not otherwise available to the examining physician.

(6) Physician's written opinion.

(i) The employer shall obtain a written opinion from the examining physician which shall include:

(a) The physician's certification that he has received the information from the employer required under the paragraph (n)(5) and has performed all medical examinations and tests which are in his opinion appropriate under this standard;

(b) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of the employee's health from exposure to ________;

(c) Any recommended limitations upon the employee's exposure to ________ or upon the use of protective clothing and equipment such as respirators; and

(d) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure to ________;

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(o) Employee Information and Training.

(1) Training Program.

(i) Within (insert appropriate time period) from the effective date of this section, the employer shall institute a training program for all employees who (specify the employees subject to the training requirement), and shall assure their participation in the training program.

(ii) The training program shall be provided at the time of initial assignment, or upon institution of the training program, and at least (insert appropriate time period) thereafter, and the employer shall assure that each employee is informed of the following:

Note.—Specify, as appropriate, some or all of the following information, or any other appropriate information. Where appropriate, require training programs with different contents, or different frequencies, for separate subpopulations of the employees specified in paragraph (o)(1).

(a) The information contained in the Appendices;

(b) The quantity, location, manner of use, release or storage of ________ and the specific nature of operations which could result in exposure to ________, as well as any necessary protective steps;

(c) The purpose, proper use, and limitations of respirators;

(d) The prupose and description of the medical surveillance program required by paragraph (n) of this section;

(e) The emergency procedures developed, as required by paragraph (i) of this section:

(f) The engineering and work practice controls, their function and the employee's relationship thereto; and

(g) A review of this standard.

(2) Access to training materials.

(i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(p) Signs and labels.

(1) General.

(i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label, required by this paragraph, which contradicts or detracts from the meaning of the required sign or label.

(2) Signs.

(i) The employer shall post signs to clearly indicate all workplaces. (Specify as appropriate the description of the area to be signposted such as "where employees are exposed to ________," or "where exposures exceed the action level," or "where exposures exceed the PEL," or "which are regulated areas"). Signs shall bear the following legend:

DANGER

(insert appropriate trade or common names)

CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(iii) Where airborne concentrations of ________ exceed the permissible exposure limits, the signs shall bear the additional legend: ("Respirator Required" or "Respirator may be Required" as appropriate).

(3) Labels.

(i) The employer shall assure that precautionary lables are affixed to all containers of ______ and of products containing ______, (specify if appropriate suitable modifications) and that the labels remain affixed when the ______ or products containing ______ are sold, distributed or otherwise leave the employer's workplace.

(ii) The employer shall assure that the precautionary lables required by this paragraph are readily visible and legible. The labels shall bear the following legend:

DANGER
CONTAINS ______
CANCER HAZARD

Note.—Utilize the clause "POTENTIAL CANCER HAZARD" if it is appropriate to include a signs and labels provision for a Category II potential carcinogen.

(q) Recordkeeping

(1) Exposure monitoring.

(i) The employer shall establish and maintain an accurate record of all monitoring required by paragraph (e) of this section.

(ii) This record shall include:

(a) The dates, number, duration, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employees exposure;

(b) A description of the sampling and analytical methods used;

(c) Type of respiratory protective devices worn, if any; and

(d) Name, social security number and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for (insert appropriate period) or for the duration of employment plus (insert appropriate period) whichever is longer.

(2) Medical surveillance.

(i) The employer shall establish and maintain an accurate record of each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(a) A copy of the physicians' written opinions or a written explanation of the absence of any such opinion or employee refusal to take the medical examination;

(b) Any employees medical complaints related to exposure to ______;

(c) A copy of the information provided to the physician as required by paragraph (n)(5)(ii)-(v) of this section unless it is systematically retained elsewhere by the employer for the period of time specified in (q)(2)(ii); and

(d) A copy of the employee's work history.

(iii) The employer shall assure that this record be maintained for (insert appropriate period) or for the duration of employment plus (insert appropriate period) whichever is longer.

(3) Availability.

(i) The employer shall assure that all records required to be maintained by this section be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) Employee exposure measurement records and employee medical records required by this section shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1910.20(a)-(e) and (g)-(i).

(4) Transfer of records.

(i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained pursuant to this section, the employer shall transmit these records to the Director.

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 19 CFR 1910.20(h).

Note. Include other recordkeeping requirements if appropriate.

(r) Observation of monitoring.

(1) **Employee observation.** The employer shall provide affected employees, or their designated representatives, an opportunity to observe any monitoring of employee exposure to ________ conducted pursuant to paragraph (e) of this section.

(2) **Observation procedures.**

(i) Whenever observation of the monitoring of employee exposure to ________ requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing or equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled to:

(a) Receive an explanation of the measurement procedures;

(b) Observe all steps related to the measurement of airborne concentrations of ________ performed at the place of exposure; and

(c) Record the results obtained and receive results supplied by the laboratory.

(s) **Effective date.** This section shall become effective (insert effective date).

(t) **Appendices.** The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

(In normal circumstances three appendices will be included in each standard, an "Appendix A – Substance Safety Data Sheet," an "Appendix B – Substance Technical Guidelines," and an "Appendix C – Medical Surveillance Guidelines." Insert additional appendices or delete any of the suggested appendices as appropriate).

1990.152—MODEL EMERGENCY TEMPORARY STANDARD PURSUANT TO SECTION 6(c)

Occupational Exposure to ________;
Emergency Temporary Standard
(Insert section number of standard)

1990.1000

(a) Scope and Application.

(1) **General.** This section applies to all occupational exposures to ________, or to (specify the uses or clases of uses of ________ [Chemical Abstracts Service Registry Number 00000], which are covered by the standard, including, where appropriate, the type of exposure to be regulated by the standard) except as provided in paragraph (a)(2).

(2) **Exemption.** This section does not apply to (insert those uses or classes of uses of ________ which are exempted from compliance with the standard, including, where appropriate,

(i) workplaces where exposure to ________ results from solid or liquid mixtures containing a specified percentage of ________ or less;

(ii) workplaces where another Federal agency is exercising statuery authority to prescribe or enforce standards or regulations affecting occupational exposure to ________ or

(iii) workplaces which are appropriately addressed in a separate standard.)

(b) Definitions.

"________" means (definition of the substance.

group of substances, or combination of substances, to be regulated).

"Authorized person" means any person specifically authorized by the employer whose duties require the person to enter a regulated area or any person entering such an area as a designated representative of employees exercising the opportunity to observe monitoring procedures under paragraph (r) of this section.

"Action level" means an airborne concentration of ______ of (insert appropriate level of exposure).

[Note: where appropriate, consider an action level as a limitation on requirements for periodic monitoring (para. (e)(3)), medical surveillance (para. (n)), training (para. (o)), and other provisions.]

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health, Education and Welfare, or designee.

"Emergency" means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which may result in a release of ______ which is (insert appropriate quantitative or qualitative level of releases which constitutes an emergency).

"OSHA Area Office" means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

(c) Permissible exposure limits.

(1) Inhalation.

(i) Time-weighted average limit (TWA). Within (insert appropriate time) from the effective date of this emergency temporary standard, the employer shall assure that no employee is exposed to an airborne concentration of— in excess of: (insert appropriate exposure limit representing a level that can be complied with immediately) as an eight (8)-hour time-weighted average.

(ii) Ceiling limit. (If appropriate.) The employer shall assure that no employee is exposed to an airborne concentration of—in excess of: (insert appropriate exposure limit representing a level that can be complied with immediately) as averaged over any: (insert appropriate time period) during the working day.

(2) Dermal and eye exposure. (As appropriate.)

(i) Within (insert appropriate time period) of the effective date of this section, the employer shall (If eye exposure to—does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse effects of eye exposure to—, if any. If eye exposure creates a risk of cancer, insert exposure level or criteria which represent the level of eye exposure to—.)

(ii) Within (insert appropriate time period of the effective date of this section, the employer shall (If skin exposure to—does not create a risk of cancer, insert exposure level or criteria which will prevent other adverse health affects of skin exposure to—if any. If skin exposure creates a risk of cancer, insert exposure level or criteria which represents the level of skin exposure to—).

[46 F.R. 5882, January 21, 1981]

(d) Notification of Use. Within (insert appropriate time and omit specific categories of information if appropriate) of the effective date of this section, or within fifteen (15) days following the introduction of ______ into the workplace, every employer shall report the following information to the nearest OSHA Area Office for each such workplace:

(1) The address and location of each workplace in which ______ is present;

(2) A brief description of each process or operation which may result in employee exposure to ______;

(3) The number of employees engaged in each process or operation who may be exposed ________ and an estimate of the frequency and degree of exposure that occurs; and

(4) A brief description of the employer's safety and health program as it relates to limitation of employee exposure to ________;

(e) Exposure monitoring.

(1) General.

(i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to ________ over an eight (8) hour period. (Modify the time period as appropriate to be practical in the relevent industries yet reasonably representative of full shift exposures.) Monitoring of exposure levels required under this paragraph shall be made as follows: [insert method or alternative methods to be used to meet the requirements of this paragraph].

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) Initial monitoring. Each employer who has one or more workplaces where (specify the types of workplaces subject to the monitoring requirement), shall within (insert appropriate period) of the effective date of this section (insert requirements for initial monitoring, as appropriate).

(3) Frequency. (Insert, if appropriate, provisions prescribing the minimum frequency at which monitoring must be repeated, the conditions under which such frequency must be increased, or may be reduced, and conditions under which such routine monitoring may be discontinued (for example where the action level is not exceeded). Where appropriate, specify different frequency requirements for certain types of workplaces where, for example, exposure levels are subject to greater or less variability.)

(4) Additional monitoring. (Insert, if appropriate, provisions for monitoring, in addition to the requirements (if any) of paragraph (e)(3). This may include a production, process, control or personnel change which might result in new or additional exposure to ________ or whenever the employer has any other reason to suspect a change which might result in new or additional exposures to ________.)

(5) Employee notification.

(i) Within (insert appropriate period) after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limits, the employer shall include in the written notice a statement that permissible exposure limits were exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limits.

(6) Accuracy of measurement. (Insert requirements for accuracy of methods of measurement or detection used to comply with the paragraph.)

(f) (Reserved.)

(g) Methods of compliance.

(1) General. Employee exposures to ________ shall be controlled to or below the permissible exposure limits by any practicable combination of engineering controls, work practices and personal protective devices and equipment, during the effective period of this emergency temporary standard.

Note.—Where engineering controls or work practices can reduce employee exposures to ________ it is recommended that they be implemented where practicable, even where they do not themselves reduce exposures to, or below the permissible exposure limits. Work practices which can be implemented by the employer to help reduce employee exposures to ________ include limiting access to work areas to authorized personnel, prohibiting smoking and consumption of food and beverages in work areas, and establishing good maintenance and housekeeping practices, including the prompt clean-up of spills and repair of leaks.

(2) Engineering and work practice control plan.

(i) Within (insert appropriate time period) of the effective date of this emergency temporary standard, the employer shall develop a written plan describing proposed means to reduce employee exposures to the lowest feasible level by means of engineering and work practice controls (which will be eventually required by a permanent standard for occupational exposure to _______, as provided for by section 1990.151(g) of this subpart).

(ii) Written plans required by this paragraph shall be submitted, upon request, to the Assistant Secretary and Director and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, and any affected employee or designated representative.

(h) Respiratory protection

(1) **Required use.** The employer shall assure that respirators are used where required pursuant to this section to reduce employee exposures to within the permissible exposure limits and in emergencies.

(2) **Respirator selection.**

(i) Where respiratory protection is required under this section, the employer shall select and provide at no cost to the employee, the appropriate respirator from Table 1 below and shall assure that the employee wears the respirator provided.

Table 1.—Respiratory Protection for
____

(The table will contain a listing of the appropriate type of respirator for various conditions of exposure to _______.)

(ii) The employer shall select respirators from those approved by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11.

(3) **Respirator program.**

(i) The employer shall institute a respirator protection program in accordance with 29 CFR 1910.134(b), (d), (e) and (f).

(ii) Employees who wear respirators shall be allowed to wash their face and respirator face piece to prevent potential skin irritation associated with respirator use.

(iii) The employer shall assure that the respirator issued to each employee is properly fitted (as appropriate, indicate the requirement for a qualitative or quantitative respirator fit testing program.)

(i) (Reserved).

(j) Protective clothing and equipment.

(1) **Provision and use.** Where employees are exposed to eye or skin contact with _______ (insert criteria which trigger this requirement as appropriate), the employer shall within (insert appropriate time period) of the effective date of this standard provide, at no cost to the employees, and assure that employees wear, appropriate protective clothing or other equipment in accordance with 29 CFR 1910.132 and .133 to protect the area of the body which may come in contact with _______.

(2) **Cleaning and replacement.**

(i) The employer shall clean, launder, maintain, or replace protective clothing and equipment required by this paragraph, as needed to maintain their effectiveness.

(k) Housekeeping.

(1) **General.** The employer shall, within (insert appropriate time period) of the effective date of this section, implement a housekeeping program to minimize accumulations of _______.

(2) **Specific provisions.** The program shall include (insert appropriate elements):

(i) Periodic scheduling of routine housekeeping procedures;

(ii) Provision for periodic cleaning of dust collection systems;

(iii) Provision for maintaining clean surfaces;

(iv) Provision for assigning personnel to housekeeping procedures; and

(v) Provision for informing employees about housekeeping program.

(l) Waste disposal.

(1) **General.** The employer shall assure that no waste material containing ______ is dispersed into the workplace, to the extent practicable.

(2) The employer shall label, or otherwise inform employees who may contact waste material containing ______ of the contents of such waste material.

(3) (Insert specific disposal methods, as appropriate.)

(m) (Reserved).

(n) Medical surveillance.

(1) **General.**

(i) The employer shall institute a program of medical surveillance for (specify the types of employees subject to the medical surveillance requirement, for example, by specifying the level, duration, and frequency of exposures to ______ which make medical surveillance appropriate for individual employees). The employer shall provide each such employee with an opportunity for medical examinations and tests in accordance with this paragraph.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

(2) **Initial examinations.** Within (insert appropriate time period) of the effective date of this section, or thereafter at the time of initial assignment, the employer shall provide each employee specified in paragraph (n)(1) of this section an opportunity for a medical examination, including at least the following elements:

(i) A work history and a medical history which shall include (insert specific areas to be covered pertinent to the health hazards posed by ______.)

(ii) A physical examination which shall include: (insert specific tests, procedures, etc., pertinent to the health hazards posed by ______. Where appropriate, provide that the examining physician shall conduct additional examinations and tests as are needed according to his professional judgement).

[Note: Where appropriate, require or permit different medical protocols, or different frequencies of medical examinations, for separate sub-populations of employees covered under paragraph (n)(1)].

(3) **Periodic examinations.** (If appropriate, insert appropriate medical protocol and time.)

(4) **Additional examinations.** If the employee for any reason develops signs or symptoms commonly associated with exposure to ______, the employer shall provide an appropriate examination and emergency medical treatment.

(5) **Information provided to the physician.** The employer shall provide the following information to the examining physician:

(i) A copy of this emergency temporary standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's actual or representative exposure level;

(iv) The employee's anticipated or estimated exposure level (for preplacement examinations or in cases of exposures due to an emergency).

(v) A description of any personal protective equipment used or to be used; and

(vi) The names and addresses of physicians who, under the sponsorship of the employer, provided previous medical examinations of the affected employee, if such records are not otherwise available to the examining physician.

(6) **Physician's written opinion.**

(i) The employer shall obtain a written opinion from the examining physician which shall include:

(a) The results of the medical tests performed;

(b) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of the employee's health from exposure to ________.

(c) Any recommended limitations upon the employee's exposure to ________ or upon the use of protective clothing and equipment such as respirators; and

(d) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure to ________;

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(o) Employee information and training.

(1) Training program

(i) Within (insert appropriate time period) from the effective date of this standard, the employer shall institute a training program for all employees who (specify the employees subject to the training requirement), and shall assure their participation in the training program.

(ii) The employer shall assure that each employee is informed of the following:

(a) The information contained in the Appendices;

(b) The quantity, location, manner of use, release, or storage of ________ and the specific nature of operations which could result in exposure to ________, as well as any necessary protective steps;

(c) The purpose, proper use, and limitations of respirators;

(d) The purpose and description of the medical surveillance program required by paragraph (n) of this section; and

(e) A review of this standard.

(2) Access to training materials.

(i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(p) Signs and labels. (Include a Signs or a Signs and Labels provision if it is appropriate for the duration of the ETS)

(1) General.

(i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label, required by this paragraph, which contradicts or detracts from the meaning of the required sign or label.

(2) Signs

(i) The employer shall post signs to clearly indicate all workplaces (Specify as appropriate the description of the area to be signposted such as 'where employees are exposed to ________,' or 'where exposures exceed the action level,' or 'where exposures exceed the PEL,' or 'which are regulated areas'). The signs shall bear the following legend:

DANGER

____

(insert appropriate trade or common names)

CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessarty so that the legend is readily visible.

(iii) Where airborne concentrations of ________ exceed the permissible exposure limits, the signs shall bear the additional legend: ("Respirator Required" or "Respirator may be Required" as appropriate).

(3) Labels.

(i) The employer shall assure that precautionary labels are affixed to all containers of ________ and of products containing ________ (specify if appropriate suitable modifications), and that the labels remain affixed when ________ or products containing ______ are sold, distributed or otherwise leave the employer's workplace.

(ii) The employer shall assure that the precautionary labels required by this paragraph are readily visible and legible. The labels shall bear the following legend:

DANGER

CONTAINS ________

CANCER HAZARD

(q) Recordkeeping

(1) Exposure monitoring.

(i) The employer shall establish and maintain an accurate record of all monitoring required by paragraph (e) of this section.

(ii) This record shall include:

(a) The dates, number, duration, and results of each of the samples taken, including a description of the sampling procedures used to determine representative employee exposure;

(b) A description of the sampling and analytical methods used;

(c) Type of respiratory protective devices worn, if any; and

(d) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for the effective period of this emergency temporary standard and for any additional period required by the permanent standard.

(2) Medical surveillance.

(i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(a) A copy of the physician's written opinions or a written explanation of the absence of any such opinion or employee refusal to take the medical examination;

(b) Any employee complaints related to exposure to ________;

(c) A copy of the information provided to the physician as required by paragraphs (n)(5)(ii)-(iv) of this section unless it is systematically retained elsewhere by the employer for the period of time specified in (q)(2)(iii); and

(d) A copy of the employee's work history.

(iii) The employer shall assure that this record be maintained for the effective period of this emergency temporary standard, and for any additional period required by the permanent standard.

(3) Availability.

(i) The employer shall assure that all records required to be maintained by this section be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) Employee exposure measurement records and employee medical records required by this section shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1970.20(a)-(e) and (g)-(i).

(r) Observation of monitoring.

(1) **Employee observation.** The employer shall provide affected employees, or their designated representatives, an opportunity to observe any monitoring of employee exposure to _______ conducted pursuant to paragraph (e) of this section.

(2) **Observation procedures.**

(i) Whenever observation of the monitoring of employee exposure to _______ requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing or equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled to:

(a) Receive an explanation of measurement procedures;

(b) Observe all steps related to the measurement of airborne concentrations of ______ performed at the place of exposure; and

(c) Record the results obtained and receive results supplied by the laboratory.

(s) **Effective date.** This section shall become effective (insert effective date).

(t) **Appendices.** The information contained in the appendices is not intended, itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

(In normal circumstances three appendices will be included in each standard, an "Appendix A—Substance Safety Data Sheet," an "Appendix B—Substance Technical Guidelines," and an "Appendix C—Medical Surveillance Guidelines." Insert additional appendices or delete any of the suggested appendices as appropriate.)

PART 1999

PROCEDURE FOR THE PREPARATION AND CIRCULATION OF ENVIRONMENTAL IMPACT STATEMENTS

1999.1 Purpose and scope.
1999.2 Identification of actions likely to require environmental impact statements.
1999.3 Initial determination of need for an impact statement.
1999.4 Preparation and circulation of draft environmental impact statements.
1999.5 Preparation and circulation of final environmental impact statements.
1999.6 Emergency circumstances.
1999.7 Effect of final impact statements upon agency decisionmaking.
1999.8 Subseuuent revisions of this part.

APPENDIX I—SUMMARY TO ACCOMPANY DRAFT AND FINAL IMPACT STATEMENTS

AUTHORITY: Sec. 102, Pub. L. 91-190, 83 Stat. 852 (42 U.S.C. 4332); EO 11514, 35 F.R. 4247, 3 CFR 1966-1970, Comp., p. 902; Secretary of Labor's Order No. 12-71 (36 F.R. 3754).

SOURCE: The provisions of this part 1999 appear at 39 F.R. 9959, March 15, 1974 unless otherwise noted.

1999.1—PURPOSE AND SCOPE

(a) Section 102 of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332) directs that, to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in the Act for the preservation of the environment. More particularly, section 102(2) (B) of NEPA requires all Federal agencies to develop methods and procedures, in consultation with the Council on Environmental Quality (Council) which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in agency decisionmaking.

(b) Section 3(h) of Executive Order 11514 of March 5, 1970 (3 CFR 1966-1970, Comp., p. 902) directs the Council to issue guidelines to Federal agencies for the preparation of environmental impact statements. On August 1, 1973, the Council published in final form its revised Guidelines, 40 CFR Part 1500 (38 F.R. 20550).

(c) The purpose of this part is to prescribe the policies and procedures to be followed when environmental impact statements are to be prepared in connection with the administration of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 651-678).

1999.2—IDENTIFICATION OF ACTIONS LIKELY TO REQUIRE ENVIRONMENTAL IMPACT STATEMENTS

(a) Section 102(2)(C) of NEPA requires all Federal agencies, including the Occupational Safety and Health Administration (OSHA), to include a detailed environmental impact statement "in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." In addition, OSHA is required, pursuant to 40 CFR 1500.6(c) of the Council's August 1, 1973 Guidelines, to identify those actions it is authorized to take that are likely to require environmental impact statements and those actions that are not likely to require impact statements.

(b) The major activities involved in implementing the Williams-Steiger Occupational Safety and Health Act of 1970 are the promulgation of occupational safety and health standards and the granting of particular variances from the standards, approval of State plans for the development and enforcement of standards, inspection of workplaces for compliance with applicable standards and enforcement proceedings where violations of standards are believed to exist.

(c) Ordinarily, the granting of variances, approval of State plans, inspection and enforcement activities, and requests for appropriations are not expected to be major Federal actions significantly affecting the quality of the human environment. On the other hand, the promulgation, modification, or revocation of standards regulating environmental hazards to health in the workplace may be a major action requiring the preparation of an environmental impact statement. Examples of such standards are those regulating exposure to radiation, excessive noise, and harmful airborne material.

1999.3—INITIAL DETERMINATION OF NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT

(a) Whenever the Occupational Safety and Health Administration is considering a major Federal action, the Director of the Office of Standards shall determine whether an environmental impact statement is required. The Director shall be the official responsible for the preparation and circulation of OSHA's impact statements (draft and final) required by this part. He shall also receive comments on the statements, prepare the comments of OSHA on impact statements of other agencies, and perform all other duties required by NEPA, Executive Order 11514, and the August 1, 1973 Guidelines (40 CFR Part 1500) relating to the administration of the Williams-Steiger Occupational Safety and Health Act of 1970.

(b) The Director shall be responsive to requests by the Council for the preparation of an impact statement unless he determines that one is not required. In that case, he shall prepare a statement indicating the reasons for such a decision that will be available for public inspection under Part 1913 of this chapter.

(c) If there is potential that a proposed action may significantly affect the human environment or that the environmental impact of the action is likely to be highly controversial, an impact statement shall be prepared. A statement shall also be prepared if it is reasonable to anticipate a cumulatively significant impact on the environment from a number of actions which, individually, have a limited environmental effect.

(d) Where the Director determines that an impact statement is required, either initially or after a previous determination that one was not required, a short statement indicating the reasons for such a decision and soliciting comments that may be helpful in preparing a draft impact statement shall be published in the FEDERAL REGISTER as soon as practicable after the determination is made. The statement shall note that (1) a copy of the draft impact statement, once it is prepared, will be available to any member of the public who requests an opportunity to comment on it; (2) any person or agency submitting comments on the draft impact statement to the Director must at the same time forward five (5) copies of the comments to the Council; and (3) a 45 day period will be allowed for the submission of comments on the draft impact statement.

(e) If the Director determines that an impact statement is not required for a proposed action which: (1) is identified by § 1999.2(c) as an action that may require a statement; (2) is similar to actions which have previously required statements; or (3) was previously announced as the subject of a statement, he shall set forth in writing the decision and the reasons for it, which shall be available for public inspection under Part 1913 of this chapter.

(f) The Director shall maintain a list of proposed actions for which impact statements are under preparation, and a list of determinations under paragraph (e) of this section not to prepare such statements. The lists shall be revised at regular intervals, no less frequently than quarterly each year. The Director shall transmit each such revision to the Council, which will periodically publish such lists in the FEDERAL REGISTER. The lists shall be made available for public inspection under Part 1913 of this chapter.

1999.4—PREPARATION AND CIRCULATION OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS

(a) After an initial determination of the need for an impact statement, the Director shall prepare and circulate a draft impact statement as early as possible following the close of the period allowed under § 1999.3(d) for public comments, but no less than 90 days before final agency action is taken. Where OSHA is involved with at least one other Federal agency in a major action that may significantly affect the human environment, the Director shall consider the possibility of joint preparation of an impact statement, or, where appropriate, designation of a single "lead agency" to prepare the statement.

(b) A draft statement must satisfy, at the time the draft is prepared, the requirements established for final statements by section 102(2)(C) of NEPA. The draft impact statement shall include a detailed statement on:

(1) The proposed action, its purposes and the environment that will be affected;

(2) The probable environmental impact of the proposed action and the sources of data used to identify, quantify, and evaluate it;

(3) The relationship, if any, of the proposed action to land use plans, policies, and controls for the affected area;

(4) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(5) Any probable adverse environmental effects, including secondary or indirect consequences, which cnnot be avoided should the proposal be implemented;

(6) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(7) Alternatives to the proposed action including, where relevant, those not within the existing authority of OSHA, that would minimize or avoid its adverse impact; and

(8) The interests and considerations of Federal policy that are thought to offset the adverse environmental effects of the proposed action should the action be adopted.

(c) Highly technical analyses and data shall be avoided in the body of the draft impact statement. Such materials shall be attached as appendices or footnoted with adequate bibliographic references.

(d) Ten copies of the draft impact statement shall be forwarded to the Council, which will publish in the FEDERAL REGISTER a notice of its filing.

(e) The draft statement shall also be circulated for comment as soon as possible to all Federal, Federal-State, State, and local agencies which have jurisdiction by law or special expertise with respect to the environmental impact involved. Those agencies and their relevant areas of expertise include those identified in Appendices II and III of the Council's August 1, 1973 Guidelines, 40 CFR Part 1500 (38 F.R. 20550). Wherever a proposed action relates to air or water quality, noise abatement and control, pesticide regulation, solid waste disposal, generally applicable environmental radiation criteria and standards, or other provision of the authority of the Administrator of the Environmental Protection Agency is involved, the Director shall submit such proposed action, and the relative draft impact statement, if any, to the Administrator for review and comment in writing.

(f) Copies of all draft impact statements shall be available to any organization or individual, without charge to the extent practicable, or at a fee which is not more than the actual cost of reproduction. A copy of the draft statement shall in all cases be sent free of charge to any applicant whose proposed action is the subject of the statement.

(g) All agencies and private parties shall be allowed a minimum of 45 days for review and submission of comments regarding a draft statement. The length of the review period shall be calculated from the date of publication in the FEDERAL REGISTER of the Council's listing notifying the public of the issuance of the impact statement. Where the Director determines that a request for an extension of time is meritorious, he may extend the review period. Where no such extension of time has been requested, and no comments have been received within the 45 day period, it may be presumed after 45 days that no agency or party has any comment to make.

(h) In cases where a public hearing is to be held on a proposed action which is the subject of an environmental impact statement, the impact of the proposed action on the environment shall be a proper issue at the hearing. The Director, to the extent practicable, should make the draft environmental impact statement available to the public at least fifteen (15) days prior to the time of such a hearing. Also, the Director may, where appropriate, hold public hearings solely for the purpose of exploring the environmental impact of a proposed action.

(i) The Director shall complete a summary sheet on each draft and final impact statement that shall accompany the statement. Appendix I of this part contains the form to follow for completing such a sheet.

1999.5—PREPARATION AND CIRCULATION OF FINAL ENVIRONMENTAL IMPACT STATEMENTS

(a) After a draft impact statement has been circulated and at least 45 days have elapsed for review of it, the Director may prepare a final impact statement. If he decides not to prepare a final statement he shall set forth in writing his decision and the reasons for it, which shall be available for public inspection under Part 1913 of this chapter.

(b) The final impact statement shall contain an analysis of all significant comments received, including comments received at a hearing. All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous) shall be attached to the final statement, whether or not each such comment is thought to merit individual discussion in the text of the statement.

(c) Ten copies of the final impact statement, together with the substance of all comments received on the draft statement, shall be forwarded to the Council which will publish a notice thereof in the FEDERAL REGISTER.

(d) Copies of final impact statements, with comments attached, shall be sent, where practicable, to all Federal, Federal-State, State, and local agencies and private organizations that made substantial comments on the draft statement and to individuals who requested a copy of the final statement, as well as any applicant whose proposal is the subject of the statement. Copies shall also be sent to all agencies that share jurisdiction and expertise with OSHA in the area that involves the proposed action. (See § 1999.4(e) and Appendices II and III of the Council's Guidelines, 40 CFR Part 1500, (38 FR 20550).)

(e) In all cases, copies of final statements shall be sent to the Environmental Protection Agency to assist it in carrying out its responsibilities under section 309 of the Clean Air Act.

(f) Once the final statement has been prepared, the Director shall make the statement, the comments received regarding the draft impact statement, and any underlying documents, available to the public pursuant to the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion of intra- or inter-agency memoranda when such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action, and in accordance with Part 1913 of this chapter. Where appropriate, the Director shall utilize methods, in addition to the Council's noticing of the statement in the FEDERAL REGISTER, to publicize the existence of the environmental impact statement.

(g) In no case shall final agency action be taken sooner than 30 days after the publication in the FEDERAL REGISTER of the Council's listing notifying the public of issuance of the final impact statement, except as otherwise provided in § 1999.6.

(h) The Director may at any time supplement or amend a draft or final impact statement, particularly when substantial changes are made in the proposed action, or significant new information becomes available concerning its environmental impact. In such cases, the Director shall consult with the Council with respect to the possible need for or desirability of recirculation of the statement for an appropriate length of time.

1999.6—EMERGENCY CIRCUMSTANCES

When emergency circumstances, overriding considerations of expense to the Federal government, or impaired program effectiveness make it necessary to take an action with significant environmental impact without observing the requirements of §§ 1999.3, 1999.4 and 1999.5, the Director shall consult as soon as possible with the Council regarding alternative procedures to be followed, which may include informal consultation with persons likely to be affected by the action.

1999.7—EFFECT OF FINAL IMPACT STATEMENTS UPON AGENCY DECISIONMAKING

In deciding whether to take an action which is the subject of a final impact statement, the Assistant Secretary of Labor for Occupational Safety and Health will consider the final impact statement and the comments thereon, along with other considerations dictated by the Williams-Steiger Occupational Safety and Health Act of 1970.

1999.8—SUBSEQUENT REVISIONS OF THIS PART

Any revision of this part will be proposed and adopted only after prior consultation with the Council and, in the case of substantial revision, opportunity for public comment. All revisions will be published in the FEDERAL REGISTER.

APPENDIX I—SUMMARY TO ACCOMPANY DRAFT AND FINAL IMPACT STATEMENTS

Check one: ( ) Draft. ( ) Final Environmental Impact Statement.

U.S. Department of Labor, Occupational Safety and Health Administration, Office of Standards, Applications Research Branch, Room 210, 1726 M Street NW., Washington, D.C. 20210.

(1) Name of action. (Check one) ( ) Administrative action. ( ) Legislative action.

(2) Brief description of action and its purpose, what States are affected, and what other, if any, Federal actions are in the geographical area.

(3) Summary of environmental impacts and adverse environmental impacts and adverse environmental effects.

(4) Summary of major alternatives considered.

(5) (For draft statements) List all Federal, State, Federal-State, and local agencies and other parties from which comments have been requested. (For final statements) List all Federal, State, Federal-State, and local agencies and other parties from which written comments have been received.

(6) Date draft statement (and final environmental impact statement, if one has been issued) was made available to the Council and the public and the final date for submission of comments.

Chapter XX—Occupational Safety and Health Review Commission

PART 2100

ETHICS AND CONDUCT OF OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION EMPLOYEES

Standards of Conduct

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APPENDIX A.

AUTHORITY: Sec. 12(g), Pub. L. 91–596, 84 Stat. 1604 (29 U.S.C. 661(f)); E.O. 11222; 3 CFR 1964–65 Comp, p. 306; 5 CFR 735.104; 18 U.S.C. 201 through 209.

SOURCE: The provisions of this part 2100 appear at 40 F.R. 6649, February 13, 1975 unless otherwise noted.

SUBPART A—GENERAL

2100.1—PURPOSE AND SCOPE

(a) This part is designed to implement provisions of Executive Order 11222 of May 8, 1965, "Prescribing Standards of Ethical Conduct for Government Officials and Employees," and 5 CFR 735.101 et seq. It prescribes standards of conduct for employees of the Occupational Safety and Health Review Commission (hereinafter OSAHRC) relating to conflicts of interest arising out of outside employment, private business and professional activities, and financial interests. It sets forth requirements for the disclosure of such interests by OSAHRC employees. In addition, it states basic principles regarding employees' conduct on the job and the ethics of their relationship to OSAHRC as their employer. The head of any OSAHRC office may with the approval of the Chairman, adopt additional standards and procedures, not inconsistent with this part. Any such additional standards and procedures shall be furnished in writing to the employees affected. This part applies to all regular and special Government employees except to the extent otherwise indicated herein. For the purpose of this part:

(1) "Regular employee" means an official or employee of OSAHRC, but does not include a special Government employee.

(2) "Special Government employee" means an official or employee of OSAHRC who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a fulltime or intermittent basis.

(3) "Employee" means a regular and a special Government employee.

(4) The term "office", except where otherwise indicated, means an office which is not a part of a larger administrative subdivision of the Commission.

(5) Whenever this part requires the Executive Director to make any report about his own interests which would otherwise be made to the Executive Director, the Executive Director shall report directly to the OSAHRC Chairman.

(b) This part, among other things, reflects prohibitions and requirements imposed by the criminal and civil laws of the United States. However, the paraphrased restatements of criminal and civil statutes in no way constitute an interpretation or construction thereof that is binding upon the Federal Government. Moreover, this part does not purport to paraphrase or enumerate all restrictions or otherwise upon Federal employees. The omission of a reference to any such restriction or requirement in no way alters the legal effect of that restriction or requirement.

2100.2—COUNSELING SERVICE

(a) The Executive Director has been designated OSAHRC counselor in matters within the scope of the regulations in this part. Employees are expected to familiarize themselves with the regulations in this part, the laws and regulations on which they are based, and the supplementary instructions issued by the administrations, bureaus, and offices in which they work. Attention of all employees is hereby directed to the statutes set forth in 5 CFR 735.210 (see Appendix A to this part). Employees who need clarification of the standards of conduct, and related laws, rules, and regulations should consult the Executive Director.

(b) Each head of an office is responsible for application of the standards of conduct to employees under his jurisdiction. He is responsible for assuring that his employees are furnished copies of the regulations in this part not later than 90 days after their approval by the Civil Service Commission. Each new employee shall be furnished such a copy no later than the time of his entrance on duty. The heads of offices shall assure that employees are advised of the times and places where counseling services are available. They shall assure that the regulations in this part are brought to the attention of each employee at least annually and at such other times as circumstances warrant.

2100.3—GENERAL

(a) Failure of an employee to comply with any of the standards of conduct set forth in this part shall be a basis for such disciplinary or other remedial action as may be appropriate to the particular case. Such remedial action may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee of his conflicting interest;

(3) Disciplinary action; or

(4) Disqualification for a particular assignment.

(b) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, executive orders and regulations.

SUBPART B—CONDUCT

2100.4—GENERAL

(a) The effectiveness of OSAHRC in fulfilling its statutory responsibilities depends upon the extent to which its officials and employees hold the public confidence. Employees are therefore required not only to observe the requirements of Federal laws, policies, orders and regulations governing official conduct, they must also avoid any apparent conflict with these requirements. Each employee shall avoid situations in which his private interests conflict or raise a reasonable question of conflict with his public duties and responsibility. An employee shall avoid any action, whether or not specifically prohibited, which might result in or create the appearance of using public office for private gain, giving preferential treatment to any person, impeding Government efficiency or economy, losing complete independence or impartiality, making a Government decision outside of official channels, or affecting adversely the confidence of the public in the integrity of the Government.

(b) Employees must conduct themselves in such manner that OSAHRC's work is effectively accomplished. They must observe the requirements of courtesy, consideration and promptness in dealing with or serving the public and all those interested in OSAHRC. Although it is the policy of this agency not to restrict or interfere with the private lives of its employees, each employee is expected to conduct himself at all times so that his actions will not bring discredit upon himself or upon OSAHRC or the Federal Service.

2100.5—NONDISCRIMINATION

No employee in this Commission while in the performance of his duty may discriminate against any other employee or applicant for employment because of race, color, religion, national origin, sex, or age.

2100.6—INDEBTEDNESS

Indebtedness of employees is essentially a matter of their own concern. OSAHRC will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Nevertheless, failure on the part of an employee without good reason and in a proper and timely manner to honor his just by him to be valid or reduced to judgment by a court or to make or to adhere to satisfactory arrangements for the settlement thereof may be the cause for disciplinary action. In this connection each employee has a special obligation to meet his responsibilities for payment of Federal, State, or local taxes.

2100.7—GAMBLING, BETTING, AND LOTTERIES

An employee shall not participate, while on Government owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool in a game for money or property, or in selling or purchasing a numbers slip or ticket.

2100.8—MISUSE OF OFFICIAL INFORMATION

Employees may not, except with specific permission or as provided in 2100.11 in regard to teaching, lecturing, or writing, directly or indirectly use or allow the use of official information for private purposes or to further a private interest when such information is not available to the general public; nor may employees disclose official information in violation of any applicable law, policy, Executive order, or regulation.

2100.9—MISUSE OF FEDERAL PROPERTY

An employee shall not directly or indirectly use or allow the use of Government property, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve such property and shall obey all rules and regulations.

2100.10—PARTISAN POLITICAL ACTIVITIES

Employees are expected to observe the prohibitions on political activities set forth in subchapter III of chapter 73 of title 5, United States Code; 18 U.S.C. 602, 603, 607, and 608; and Civil Service Rule IV, Title 5 Code of Federal Regulations section 4.1. Explanations of the restrictions are set forth in the Employee Handbook, U.S. Civil Service Commission Pamphlet No. 20, and in the Federal Personnel Manual.

SUBPART C—OUTSIDE INTERESTS, EMPLOYMENT, BUSINESS AND PROFESSIONAL ACTIVITIES

2100.11—GENERAL

(a) In the absence of restrictions made necessary by an employee's public responsibilities, he is entitled to the same rights and privileges as all other citizens. There is therefore no general prohibition against Commission employees holding jobs, financial interests, or engaging in outside business or professional activities. Indeed, such outside activities as teaching, lecturing, and writing are generally to be encouraged since they frequently serve to enhance an employee's value to the Government as well as to increase the spread of knowledge in our society. The employing office may, however, impose reasonable restrictions upon such activities where appropriate and in accordance with § 2100.1. In addition, an employee may not, whether for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request or when the head of his employing office gives written authorization for the use of nonpublic information on the basis that its use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401 of Executive Order 11222 of May 8, 1965, shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not become a part of the body of public information.

(b) No OSAHRC employee may accept any outside employment, engage in any outside business, professional, or other activity, or have financial interests if such employment, activity, or interests would be or appear to be in substantial conflict with OSAHRC responsibilities or the interests of the Government, would interfere with the performance of official duties, would prevent a regular employee from rendering full-time service to OSAHRC or require so much time that his efficiency is impaired, or if such employment, activity, or interest would bring discredit on OSAHRC or the Government. In addition, no employee may engage, directly or indirectly, in a financial transaction as a result of, or relying primarily on, information obtained through his Government employment.

(c) No employee may use or appear to use his Government employment to coerce any person, enterprise, company, association, partnership, society, or other organization or instrumentality to provide financial benefit to himself or another person.

2100.12—CONFLICT-OF-INTEREST LAWS

Sections 201 through 209 of title 18, United States Code, prohibit and provide criminal penalties for certain acts by Government employees involving conflict-of-interest situations, including limited exceptions for special Governments employees. These provisions include the following prohibitions:

(a) Section 203, in general, prohibits a Federal employee from soliciting, receiving, or agreeing to receive compensation for services rendered on behalf of another before a Government department or agency in relation to any particular matter in which the United States is a party or has a direct and substantial interest.

(b) Section 205, in general, prohibits a Federal employee from acting as agent or attorney for prosecuting any claim against the United States or acting as agent or attorney for anyone before any Federal courts or agencies in connection with any particular matters in which the United States is a party or has a direct and substantial interest. It also prohibits him from receiving any gratuity, or any share of or interest in any claim against the United States in consideration of assistance in the prosecution of such claim.

(c) Section 208, in general, prohibits a Government employee in his official capacity from participating personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, or otherwise in any particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment has a financial interest. In accordance with the provisions of section 208(b)(2), the financial interests described below are hereby exempted from the prohibition of 18 U.S.C. 208 as being too remote or too inconsequential to affect the integrity of an employee's services in a matter: the policy holdings in an insurance company and the stock or bond holdings in a mutual fund, investment company, or bank which owns an interest in an entity involved in the matter: Provided, that in the case of a mutual fund, investment company, or bank the fair value of such stock or bond holding does not exceed 1 percent of the value of the reported assets of the mutual fund, investment company, or bank. In addition, the prohibitions of section 208(a) shall not apply if the employee obtains advance clearance in accordance with the requirements of section 208.

(d) Section 209, in general, prohibits regular Government employees from receiving salary or supplementation of salary as compensation for their Government service from any source other than the United States. The statutory provisions described in this section are intended to call each employee's attention to problem areas and are not intended as a comprehensive description or interpretation of statutory prohibitions or the exceptions thereto. Employees who need guidance concerning the scope and application of the conflict-of-interest laws and their execution should consult the Executive Director.

2100.13—CLEARANCE

(a) Any employee who is engaged or is planning to engage in outside employment, business, professional, or other such activities has a positive obligation to inform himself fully concerning the requirements of this subpart and any laws, orders, regulations, or standards applicable to such activities. An employee shall request clearance from the Executive Director as to whether such planned or current activities are prohibited:

(1) When such activities raise a substantial question of conflict with this subpart or any applicable laws, orders, regulations, or standards;

(2) When applicable laws, orders, regulations, or standards require clearance of such activities; or

(3) When the employee is specifically so required by the individual responsible for clearance in order to avoid possible conflict with applicable laws, orders, regulations, or standards.

The clearance request shall be in writing and shall include, at a minimum, the identity of the employee, a statement of the nature of the employment or activity, and the amount of time to be devoted to the employment or activity. The Executive Director may require the employee to furnish such other information as may be appropriate in considering the clearance request. He may grant clearance only when he believes such activities would be consistent with applicable laws, orders, regulations, and standards. If clearance is not granted, the employee shall not commence or continue the outside employment or activity.

(b) The requirements set forth in this subpart are separate from and in addition to any provision under Subpart E of this part requiring an employee to submit a statement of employment and financial interests or any other requirements of that subpart.

SUBPART D—GIFTS, FEES, ENTERTAINMENT, AND FAVORS

2100.14—ACCEPTANCE OF GRATUITIES GENERALLY

No employee shall solicit, accept, or agree to accept any direct or indirect favor, gift, loan, free service, gratuity, entertainment, or other item of economic value if the donor has or is seeking to obtain contractual or other business or financial relations with OSAHRC, has interests that may be substantially affected by the performance or nonperformance of official duties, is attempting to reward or influence the employees' offical actions, or if acceptance of such item could affect the employee's impartiality, or give that appearance. An employee shall not accept a gift, present, decoration, or other thing from a foreign Government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342. No regular Government employee may receive any salary or supplementation of salary from a private source as compensation for services to the Government.

2100.15—PAYMENTS, EXPENSES, REIMBURSEMENTS, ENTERTAINMENT, ETC., FROM NON-GOVERNMENT SOURCES

(a) In general, Decision B-128527 of the Comptroller General dated March 7, 1967, restricts receipt of reimbursement for travel, subsistence, or other expenses from private sources by an employee on official business or agency orders. This decision or other regulations in this part do not restrict acceptance of contributions, awards, travel, subsistence, and other expenses from nonprofit organizations authorized by 5 U.S.C. 4111 and regulations issued thereunder; Provided, that an employee may not, without the written permission of the Executive Director (except as allowed by § 2100.17 (a) (6)), accept from nongovernmental sources any payments, expenses, reimbursements, entertainment, or other item of economic value incident to training, attendance at meetings of any kind, or other activities, if such training, meetings, or activities are attended or performed wholly or partially within periods when he is on duty or at such time as OSAHRC pays any expenses incident thereto in whole or in part. Such authorization may not be granted where prohibited by law or Decision B-128527 of the Comptroller General and may only be granted if acceptance of the contribution, award, or payment:

(1) Would not reflect unfavorably on the ability of the employee to carry out his official duties in a fair and objective manner;

(2) would not compromise the honesty and integrity of the Government programs or of Government employees and their official actions or decisions;

(3) would be compatible with the Code of Ethics of Government Service expressed in House Concurrent Resolution 175, 85th Congress, second session;

(4) would otherwise be proper and ethical for the employee concerned under the circumstances of his particular case; and

(5) if the contribution, award, or payment is not a reward for services to the organization prior to the training or meeting. Authorization shall be limited to receipt of bona fide reimbursement for actual expenses of travel and other necessary subsistence for which no Government payment or reimbursement is made. However, an employee may not be reimbursed and payment may not be made on his behalf for excessive personal living expenses, gifts, entertainment, or other personal benefits.

2100.16—CONTRIBUTIONS AND GIFTS TO SUPERIORS

No employee may solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself. An employee shall not make a donation as a gift to an employee in a superior official position. This section does not prohibit voluntary gifts of nominal value or donations in a nominal amount made on a special occasion such as marriage, illness, etc.

2100.17—PERMISSIBLE GIFTS

(a) The prohibitions in this subpart do not preclude:

(1) Acceptance of unsolicited advertising or promotional material of nominal intrinsic value;

(2) Acceptance of an award for meritorious public contribution given by a charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service, or civil organization;

(3) Acceptance of gifts resulting from obvious family or personal relationships when the circumstances make clear that it is those relationships rather than the business of the persons concerned which are the motivating factor;

(4) Acceptance of loans from banks, or other financial institutions on customary terms to finance proper and usual activities;

(5) Acceptance of scholarships, fellowships, and similar forms of assistance which are incident to education or training pursued by an employee on his own time and his own initiative;

(6) Acceptance, without permission, of food, entertainment, and refreshments of nominal value on infrequent occasions in the ordinary course of a meeting, inspection tour, or training situation in which the employee is properly in attendance.

(b) Notwithstanding any reference to generally permissible gifts in this subpart, employees are expected to avoid any conflict or apparent conflict between their private interests and those of OSAHRC and to observe the other standards of conduct set forth in Subpart B of this part.

SUBPART E—STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS

2100.18—REGULAR EMPLOYEES REQUIRED TO SUBMIT STATEMENTS

(a) The following regular employees are required to submit to the Executive Director statements of employment and financial interests on forms approved by the Executive Director and furnished to the employees. Such forms must be completed in accordance with instructions applicable thereto. Forms shall be submitted not later than 90 days after the effective date of the regulations in this part, if employed on or before that effective date or 30 days after his entrance on duty, but not earlier than 90 days after the effective date if appointed after the effective date.

(1) Chief Legal Counsels to the Commission Members;

(2) Executive Director;

(3) Chief Judge;

(4) Executive Secretary;

(5) Chief Review Counsel;

(6) Director of Administration;

(7) Director of Systems;

(8) Director of Information and Publications;

(9) Administrative Law Judges, as defined by § 930.202(c) of the Civil Service Commission regulations (5 CFR 930.202 (c));

(10) General Counsel; and

(11) Any person designated to act in the stead of any of the above or who automatically serves in the absence of any of the above.

(b) Additions to, deletions from, and other amendments of the list of positions in this section may be made from time to time as necessary to carry out the purpose of the law, Executive Order 11222, and Part 735 of the Civil Service Commission regulations (5 CFR Part 735). Such amendments are effective upon clearance by the Executive Director and actual notification to the incumbents. The amended list shall be submitted, annually for publication in the FEDERAL REGISTER.

(c) Any employee who believes that his position has been improperly included under this subpart as one requiring the submission of a statement of employment and financial interests shall have the opportunity for review of such inclusion by requesting the same by filing a written statement with the OSAHRC Chairman.

2100.19—SUPPLEMENTARY STATEMENTS, REGULAR EMPLOYEES

Changes in, or additions to the information contained in the regular employee's statement of employment and financial interests shall be reported in a supplementary statement as of September 30 each year. If there are no changes or additions, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest laws or Subpart C of this part.

2100.20—SPECIAL GOVERNMENT EMPLOYEES REQUIRED TO SUBMIT STATEMENTS

(a) Before an individual enters on duty as a special Government employee expert or consultant he is required to submit a statement of employment and financial interests to the Executive Director on forms approved by the Executive Director and furnished to the individual. Such forms must be completed in accordance with the instructions applicable thereto. This requirement applies to all other special Government employees positions unless the Executive Director determines prior to appointment that the duties of the position are of such a nature and at such a level of responsibility that the submission of the statement is not necessary to protect the integrity of the Government. For the purpose of this section, "consultant" and "expert" shall be given the meanings given these terms by Chapter 304 of the Federal Personnel Manual.

(b) Each special Government employee shall keep his statement of employment and financial interests current throughout his OSAHRC employment by the submission of supplementary statements.

2100.21—REVIEW PROCEDURES

(a) The Executive Director shall promptly review each initial and supplementary statement of employment and financial interests required by this part. No individual may enter on duty as a special Government employee if the Executive Director determines that employment would be in conflict with the standards set forth in this part, or other applicable regulations, laws, or orders.

(b) Before the Executive Director disapproves a statement of employment and financial interests submitted by a regular or special Government employee, such employee must be given an

best copy available

opportunity to explain the possible or apparent conflict of interest. The Executive Director may require the employee to furnish such additional information as may be appropriate in considering the statement of employment and financial interests. If, after adequate investigation, he disapproves an employee's statement of employment and financial interests, he shall promptly notify the employee of the disapproval and recommend appropriate remedial action pursuant to § 2100.3. If the employee is unwilling or unable to take such action, the Executive Director shall forthwith transmit the employee's statement of employment and financial interests and other pertinent information to the OSAHRC Chairman. The Chairman shall review all such forms and shall take appropriate action on such statements of employment and financial interests and shall initiate appropriate remedial action under 2100.3 and other applicable laws, orders, and regulations. Pending any final determination with regard to an employee's statement of employment and financial interests, the Executive Director shall relieve the employee of any duties which appear to conflict with a private interest or activity.

2100.22—CONFIDENTIALITY

Each such statement of employment and financial interests and supplementary statements will be held in confidence. Statements shall be kept in a special file maintained by the Executive Director. No statement or copy thereof may be placed in an employee's personnel file. The Executive Director is also responsible for maintaining the statement in confidence and shall not allow an individual to examine any statement or copy thereof without the approval of the OSAHRC Chairman for good cause shown, except in fulfillment of his responsibilities under the regulations in this part. No information from a statement of employment and financial interests may be disclosed outside of the agency except as the OSAHRC Chairman or the Civil Service Commission may determine for good cause shown.

2100.23—REVIEW OF FILES

The OSAHRC Chairman or his designee may from time to time examine the files containing statements of employment and financial interests and supplementary statements, including those approved by the Executive Director. He shall take any appropriate corrective action.

2100.24—INTERESTS OF EMPLOYEES' RELATIVES

For the purpose of the statements of employment and financial interests required by this subpart, the interest of a spouse, minor child, or other member of the employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relatives who are residents of the employee's household.

2100.25—INFORMATION NOT KNOWN BY EMPLOYEES

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

2100.26—INFORMATION NOT REQUIRED

This subpart does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the policy holdings in an insurance company and the stock or bond holdings in a mutual fund, investment company, or bank; Provided, that in the case of a mutual fund, investment company, or bank, the fair value of such stock or bond holding does not exceed one percent of the value of the reported assets of the mutual fund, investment company, or bank. In addition, this subpart does not require submission of information relating to the employee's connection with, or interest in, a professional society or charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business enterprise or subject to the provisions of the Occupational Safety and Health Act of 1970. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

2100.27—EFFECT OF EMPLOYEE'S STATEMENTS ON OTHER REQUIREMENTS

The statement of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirements imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

APPENDIX A

Attention of OSAHRC employees is hereby directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, second session, 72A stat, B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriate funds (18 U.S.C. 1913).

(d) The prohibition against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a (c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibition against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) the Prohibition against an employer acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Chapter XX—Occupational Safety and Health Review Commission

PART 2200

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Authority: Sec. 12(g) of the Occupational Safety and Health Act, Pub. L. No. 91-596 (29 U.S.C. § 661(f)).

Source: The provisions of this Part 2200 appear at 37 F.R. 20237, Sept. 28, 1972, unless otherwise noted.

SUBPART A—GENERAL PROVISIONS

2200.1—DEFINITIONS

As used herein:

(a) "Act" means the Occupational Safety and Health Act of 1970, 84 Stat. 1590, 29 U.S.C.A. 651, et seq.

(b) "Commission," "person," "employer," and "employee" have the meanings set forth in § 3 of the Act.

(c) "Secretary" means the Secretary of Labor or his duly authorized representative.

(d) "Executive Secretary" means the Executive Secretary of the Commission.

(e) "Affected employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.

(f) "Judge" means a Hearing Examiner appointed by the Chairman of the Commission pursuant to § 12(j) of the Act.

(g) "Authorized employee representative" means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.

(h) "Representative" means any person, including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

(i) "Citation" means a written communication issued by the Secretary to an employer pursuant to § 9(a) of the Act.

(j) "Notification of proposed penalty" means a written communication issued by the Secretary to an employer pursuant to § 10(a) or (b) of the Act.

(k) "Day" means a calendar day.

(l) "Working day" means all days except Saturdays, Sundays, or Federal holidays.

(m) "Proceeding" means any proceeding before the Commission or before a Judge.

2200.2—SCOPE OF RULES; APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE

(a) These rules shall govern all proceedings before the Commission and its Judges.

(b) In the absence of a specific provision, procedures shall be in accordance with the Federal Rules of Civil Procedure.

2200.3—USE OF GENDER AND NUMBER

(a) Words importing the singular number may extend and be applied to the plural and vice versa.

(b) Words importing the masculine gender may be applied to the feminine gender.

2200.4—COMPUTATION OF TIME

(a) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and Federal holidays shall be excluded in the computation.

(b) Where service of a pleading or document is by mail pursuant to § 2200.7 of this subpart, 3 days shall be added to the time allowed by these rules for the filing of a responsive pleading.

2200.5—EXTENSIONS OF TIME

Requests for extensions of time for the filing of any pleading or document must be received in advance of the date on which the pleading or document is due to be filed.

2200.6—RECORD ADDRESS

The initial pleading filed by any person shall contain his name, address, and telephone number. Any change in such information must be communicated promptly in writing to the Judge or the Commission, as the case may be, and to all other parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.

2200.7—SERVICE AND NOTICE

(a) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

(b) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(c) Unless otherwise ordered, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(d) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(e) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

(f) Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in paragraph (c) of this section.

(g) In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the docketing of the notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the Secretary of Labor for violation of the Occupational Safety and Health Act of 1970. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Commission in its Rules of Procedure. Notice of intent to participate should be sent to:

Occupational Safety and Health
Review Commission
1825 K Street, N.W.
Washington, D.C. 20006

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substitued:

The reasonableness of the period prescribed by the Secretary of Labor for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(h) The authorized employee representative, if any, shall be served with the notice set forth in paragraph (g) of this section and with a copy of the notice of contest.

(i) A copy of the notice of the hearing to be held before the Judge shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

(j) A copy of the notice of the hearing to be held before the Judge shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in paragraph (c) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.

(k) Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with § 2200.35 of this part, serve a copy thereof on such authorized employee representative in the manner prescribed in paragraph (c) of this section and shall file proof of such service.

(l) Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in paragraph (g) of this section.

(m) An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

(n) Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

2200.8—FILING

(a) Prior to the assignment of a case to a Judge, all papers shall be filed with the Executive Secretary at 1825 K Street, NW., Washington, D.C. 20006. Subsequent to the assignment of the case to a Judge, and before the issuance of his decision, all papers shall be filed with the Judge at the address given in the notice informing of such assignment. Subsequent to the issuance of the decision of the Judge, all papers shall be filed with the Executive Secretary.

(b) Unless otherwise ordered, all filing may be accomplished by first class mail.

(c) Filing is deemed effected at the time of mailing.

2200.9—CONSOLIDATION

Cases may be consolidated on the motion of any party, on the Judge's own motion, or on the Commission's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

2200.10—SEVERANCE

Upon its own motion, or upon motion of any party or intervenor, the Commission or the Judge may, for good cause, order any proceeding severed with respect to some or all issues or parties.

2200.11—PROTECTION OF TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION

Upon application by any person, in a proceeding where trade secrets or other matters may be divulged the confidentiality of which is protected by 18 U.S.C. 1905, the Judge shall issue such orders as may be appropriate to protect the confidentiality of such matters.

[44 F.R. 70110, December 5, 1979.]

SUBPART B—PARTIES AND REPRESENTATIVES

2200.20—PARTY STATUS

(a) Affected employees may elect to participate as parties at any time before the commencement of the hearing before the Judge, unless, for good cause shown, the Commission or the Judge allows such election at a later time. See also § 2200.21.

(b) Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing before the Judge. See also § 2200.21.

2200.21—INTERVENTION; APPEARANCE BY NONPARTIES

(a) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing before the Judge.

(b) The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.

(c) The Commission or the Judge may grant a petition for intervention to such an extent and upon such terms as the Commission or the Judge shall determine.

2200.22—REPRESENTATIVES OF PARTIES AND INTERVENORS

(a) Any party or intervenor may appear in person or through a representative.

(b) A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

(c) Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

(d) Nothing contained herein shall be construed to require any representative to be an attorney at law.

(e) Withdrawal of appearance of any representative may be effected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

SUBPART C—PLEADINGS AND MOTIONS

2200.30—FORM

(a) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with rule 31 of this subpart, which shall include the Commission's docket number, if assigned, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

(b) Pleadings and other documents (other than exhibits) shall be typewritten, double spaced, on letter size opaque paper (approximately 8½ inches by 11 inches). The left margin shall be 1½ inches and the right margin 1 inch. Pleadings and other documents shall be fastened at the upper left corner.

(c) Pleadings shall be signed by the party filing or by his representative. Such signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.

(d) When a court decision is cited in which the first-listed parties on each side are the Secretary of Labor (or the name of a particular Secretary of Labor) and the Commission, the citation shall include in parenthesis the name of the respondent in the Commission proceeding. For example: *Brennan v. OSHRC (Vy Lactos Laboratories, Inc.)*, 494 F.2d 460 (8th Cir. 1974).

(e) The Commission may refuse for filing any pleading or document which does not comply with the requirements of paragraphs (a), (b), (c) and (d) of this section.

[44 F.R. 70110, December 5, 1979.]

2200.31—CAPTION; TITLES OF CASES

(a) Cases initiated by a notice of contest shall be titled:

Secretary of Labor,
Complainant
v.
(Name of Contestant),
Respondent.

(b) Cases initiated by a petition for modification of the abatement period shall be titled:

(Name of employer),
Petitioner
v.
Secretary of Labor,
Respondent.

(c) The titles listed in paragraphs (a) and (b) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

(d) The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Commission.

2200.32—NOTICES OF CONTEST

The Secretary shall, within 7 days of receipt of a notice of contest, transmit the original to the Commission, together with copies of all relevant documents.

2200.33—EMPLOYER CONTESTS

(a) Complaint.

(1) The Secretary shall file a complaint with the Commission no later than 20 days after his receipt of the notice of contest.

(2) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

(i) The basis for jurisdiction;

(ii) The time, location, place, and circumstances of each such alleged violation; and

(iii) The considerations upon which the period for abatement and the proposed penalty for each alleged violation is based.

(3) Where the Secretary seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

(b) Answer.

(1) Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the Commission.

(2) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

2200.34 PETITIONS FOR MODIFICATION OF ABATEMENT

(a) An employer may file a petition for modification of abatement date when such employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond the employer's reasonable control.

(b) A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(c) A petition for modification of abatement date shall be filed with the Area Director of the United States Department of Labor who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(1) A copy of such petition shall be posted in a conspicuous place where all affected employ-

ees will have notice thereof or near each location where the violation occurred. The petition shall remain posted for a period of ten (10) days.

(2) Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Area Director. Failure to file such objection within ten (10) working days of the date of posting of such petition shall constitute a waiver of any further right to object to said petition.

(3) The Secretary or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to subparagraphs (b) and (c). Such uncontested petitions shall become final orders pursuant to sections 10 (a) and (c) of the Act.

(4) The Secretary or his authorized representative shall not exercise his approval power until the expiration of fifteen (15) working days from the date the petition was posted pursuant to paragraphs (c)(1) and (2) by the employer.

(d) Where any petition is objected to by the Secretary or affected employees, such petition shall be processed as follows:

(1) The petition, citation and any objections shall be forwarded to the Commission within three (3) working days after the expiration of the fifteen (15) day period set out in paragraph (c)(4).

(2) The Commission shall docket and process such petitions as expedited proceedings as provided for in § 2200.101 of this Part.

[43 F.R. 4604, February 3, 1978.]

(3) An employer petitioning for a modification of abatement period shall have the burden of proving in accordance with the requirements of 29 U.S.C. § 659 (c), that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.

(4) Within ten (10) working days after the receipt of notice of the docketing by the Commission of any petition for modification of abatement date, each objecting party shall file a response setting forth the reasons for opposing the granting of a modification date different from that requested in the petition.

2200.35—EMPLOYEE CONTESTS

(a) Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the Secretary shall, within 10 days from his receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by him is not unreasonable.

(b) Not later than 10 days after receipt of the statement referred to in paragraph (a) of this section, the contestant shall file a response.

(c) All contests under this section shall be handled as expedited proceedings as provided for in § 2200.101 of this Part.

[43 F.R. 4604, February 3, 1978.]

2200.36—STATEMENT OF POSITION

At any time prior to the commencement of the hearing before the Judge, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

2200.37—RESPONSE TO MOTIONS

Any party or intervenor upon whom a motion is served shall have 10 days from service of the motion to file a response.

2200.38—FAILURE TO FILE

Failure to file any pleading pursuant to these rules when due, may, in the discretion of the Commission or the Judge, constitute a waiver of the right to further participation in the proceedings.

SUBPART D—PREHEARING PROCEDURES AND DISCOVERY

2200.51—PREHEARING CONFERENCE

(a) At any time before a hearing, the Commission or the Judge, on their own motion or on the motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference to consider settlement or matters which will tend to simplify issues or expedite the hearing.

[44 F.R. 70110, December 15, 1979.]

(b) The Commission or the judge may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

2200.52—REQUESTS FOR ADMISSIONS

(a) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within 15 days after service of the request, or within such shorter or longer time as the Commission or the Judge may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

(b) Copies of all requests and responses shall be served on all parties in accordance with the provisions of § 2200.7(a) and filed with the Commission within the time allotted and shall be a part of the record.

2200.53—DISCOVERY DEPOSITIONS AND INTERROGATORIES

(a) Except by special order of the Commission or the Judge, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(b) In the event the Commission or the Judge grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

2200.54—FAILURE TO COMPLY WITH ORDERS FOR DISCOVERY

If any party or intervenor fails to comply with an order of the Commission or the Judge to permit discovery in accordance with the provisions of these rules, the Commission or the Judge may issue appropriate orders.

2200.55—ISSUANCE OF SUBPENAS; PETITIONS TO REVOKE OR MODIFY SUBPENAS; RIGHT TO INSPECT OR COPY DATA

(a) Any member of the Commission shall, on the application of any party directed to the Commission, forthwith issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. Applications for subpenas, if filed subsequent to the assignment of the case to a Judge, shall be filed with the Judge. A Judge shall grant the application on behalf of any member of the Commission. Applications for subpenas may be made ex parte. The subpena shall show on its face the name and address of the party at whose request the subpena was issued.

(b) Any person served with a subpena, whether ad testificandum or duces tecum, shall, within 5 days after the date of service of the subpena upon him, move in writing to revoke or modify the subpena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpena was issued. The Judge or the Commission, as the case may be, shall revoke or modify the subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpena is otherwise invalid. The Judge or the Commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

(c) Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.

(d) Upon the failure of any person to comply with a subpena issued upon the request of a party, the Commission by its counsel shall initiate proceedings in the appropriate district court for the enforcement thereof, if in its judgment the enforcement of such subpena would be consistent with law and with policies of the Act. Neither the Commission nor its counsel shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

SUBPART E—HEARINGS

2200.60—NOTICE OF HEARING

Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least 10 days in advance of such hearing, except as otherwise provided in § 2200.101.

2200.61—POSTPONEMENT OF HEARING

(a) Postponement of a hearing ordinarily will not be allowed.

(b) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least 3 days in advance of the time set for the hearing.

(c) No postponement in excess of 30 days shall be allowed without Commission approval.

2200.62—FAILURE TO APPEAR

(a) Subject to the provisions of paragraph (c) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the Judge and to request Commission review pursuant to § 2200.91.

(b) Requests for reinstatement must be made, in the absence of extraordinary circumstances, within 5 days after the scheduled hearing date.

(c) The Commission or the Judge, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

2200.63—PAYMENT OF WITNESS FEES AND MILEAGE; FEES OF PERSONS TAKING DEPOSITIONS

Witnesses summoned before the Commission or the Judge shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

2200.64—REPORTER'S FEES

Reporter's fees shall be borne by the Commission, except as provided in § 2200.63.

2200.65—TRANSCRIPT OF TESTIMONY

Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the Judge before whom the matter was heard. The Judge shall promptly serve notice upon each of the parties and intervenors of such filing.

2200.66—DUTIES AND POWERS OF JUDGES

It shall be the duty of the Judge to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The Judge shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and regulations of the Commission, to:

(a) Administer oaths and affirmations;

(b) Issue authorized subpenas;

(c) Rule upon petitions to revoke subpenas;

(d) Rule upon offers of proof and receive relevant evidence;

(e) Take or cause depositions to be taken whenever the needs of justice would be served;

(f) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(g) Hold conferences for the settlement or simplification of the issues;

(h) Dispose of procedural requests or similar matters, including motions referred to the Judge by the Commission and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;

(i) Make decisions in conformity with § 557 of title 5, United States Code;

(j) Call and examine witnesses and to introduce into the record documentary or other evidence;

(k) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(l) Adjourn the hearing as the needs of justice and good administration require;

(m) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the Commission.

2200.67—DISQUALIFICATION OF JUDGE

(a) A Judge may withdraw from a proceeding whenever he deems himself disqualified.

(b) Any party may request the Judge, at any time following his designation and before the filing of his decision, to withdraw on ground of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) If, in the opinion of the Judge, the affidavit referred to in paragraph (b) of this section is filed with due diligence and is sufficient on its face, the Judge shall forthwith disqualify himself and withdraw from the proceeding.

(d) If the Judge does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision, and the provisions of §2200.90 shall thereupon apply.

2200.68—EXAMINATION OF WITNESSES

Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

2200.69—AFFIDAVITS

An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

2200.70—DEPOSITION IN LIEU OF ORAL TESTIMONY; APPLICATION; PROCEDURES. FORM; RULINGS

(a) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected he will testify and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, hereinafter referred to as "the officer"). Such application shall be filed with the Commission or the Judge, as the case may be, and shall be served on all other parties and intervenors not less than 7 days (when the deposition is to be taken within the continental United States) and not less than 15 days (if the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken. Where good cause has been shown, the Commission or the Judge shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.

(b) Such deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. If the examination is held in a foreign country, it may be taken before any secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States.

(c) At the time and place specified in the order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver an original and four copies of the transcript, together with his certificate, in person or by registered mail to the Executive Secretary at 1825 K Street, NW., Washington, D.C. 20006.

(d) The Judge shall rule upon the admissibility of the deposition or any part thereof.

(e) All errors or irregularities in compliance with the provision of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, discovered.

(f) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

2200.71—EXHIBITS

(a) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(b) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the Judge pursuant to § 2200.72.

(c) Unless the Judge finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

(d) All exhibits offered, but denied admission into evidence, shall be identified as in paragraph (a) of this section and shall be placed in a separate file designated for rejected exhibits.

2200.72—RULES OF EVIDENCE

Hearings before the Commission and its Judges shall be in accordance with § 554 of Title 5 U.S.C. and insofar as practicable shall be governed by the rules of evidence applicable in the United States District Courts.

2200.73—BURDEN OF PROOF

(a) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the Secretary.

(b) In proceedings commenced by a petition for modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

2200.74—OBJECTIONS

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Judge, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(b) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

2200.75—INTERLOCUTORY APPEALS.

(a) Generally. A Judge's interlocutory ruling may be appealed to the Commission only in the manner prescribed by this rule.

(b) Certification. A party desiring to appeal from an interlocutory ruling shall file with the Judge a written request for certification of the appeal. The request and supporting documents shall be filed within 5 days after receipt of the Judge's ruling from which appeal is sought. Responses to the request, if any, shall be filed within 5 days after service of the request. The Judge shall certify an interlocutory appeal when the ruling involves an important question of law or policy about which there is substantial ground for difference of opinion and an immediate appeal of the ruling may materially expedite the proceedings.

(1) Procedure after certification. Following certification, the Judge shall forward to the Executive Secretary the request for certification and supporting documents, responses filed by the other parties, the ruling from which appeal is taken, a copy of relevant portions of the record, and the Judge's order certifying the appeal.

(2) Acceptance of certification—discretionary. The Commission at any time may decline to accept a certification.

(c) Petition for interlocutory appeal. Within 5 days following the receipt of a Judge's order denying certification, a party may file with the Commission a petition for interlocutory appeal. Responses to the petition, if any, shall be filed within 5 days following service of the petition. The Commission shall grant a petition for interlocutory appeal only in exceptional circumstances where it finds (1) that the appeal satisfies the criteria for certification of an appeal set forth in paragraph (b) of this section; and (2) that there is a substantial probability of reversal.

(d) **Denial without prejudice.** The Commission's action in declining to accept a certification or denying a petition for interlocutory appeal shall not preclude a party from raising an objection to the Judge's interlocutory ruling in a petition for discretionary review. A party whose request for certification of an interlocutory appeal is denied by a Judge and who elects not to file a petition for interlocutory appeal with the Commission shall not be precluded from raising in a petition for discretionary review an objection to the ruling from which interlocutory appeal was sought.

(e) Stay.

(1) **Trade secret mattters.** The filing with a Judge of a request to certify an interlocutory appeal of a ruling concerning an alleged trade secret shall stay the effect of the ruling:

(i) until the Judge denies the request; or

(ii) if the request is granted, until the Commission rules on the appeal or declines to accept the certification. In the event such a request is denied, the Judge, upon motion of the requesting party, shall stay for a period of 5 days the effect of the ruling from which appeal was sought in order to allow the party to petition the Commission for interlocutory appeal of the ruling. The filing with the Commission of a petition for interlocutory appeal of a ruling concerning an alleged trade secret shall stay the effect of the ruling until the Commission denies the petition or rules on the appeal.

(2) **Other cases.** In all other cases, the filing or granting of a request to certify an interlocutory appeal, or the filing or granting of a petition for interlocutory appeal, shall not stay a proceeding or the effect of a ruling unless otherwise ordered.

(f) **Briefs.** Should the Commission desire briefs on the issues raised by an interlocutory appeal, it shall give notice to the parties. See § 2200.93 Briefs before the Commission.

[44 F.R. 70110, December 5, 1979.]

2200.76—FILING OF BRIEFS AND PROPOSED FINDINGS WITH THE JUDGE; ORAL ARGUMENT AT THE HEARING

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the Judge. The Judge may fix a reasonable period of time for such filing, but such initial period may not exceed 20 days from the receipt by the party of the transcript of the hearing.

SUBPART F—POST HEARING PROCEDURES

2200.90—DECISIONS AND REPORTS OF JUDGES

(a) Upon completion of any proceeding, the Judge shall prepare a decision. When a hearing is held, the decision shall comply with 5 U.S.C. 557. Copies of the decision shall be mailed to all parties. Thereafter, the Judge shall file with the Executive Secretary a report consisting of his decision, the record in support thereof, and any petitions for discretionary review of his decision, or statements in opposition to such petitions, that may be filed in accordance with §2200.91. The Judge shall file his report on the day following the close of the period for filing petitions for discretionary review, or statements in opposition to such petitions, but no later than the twenty-first day following the date of the mailing of the decision to the parties.

(b)

(1) Promptly upon receipt of the Judge's report, the Executive Secretary shall docket the case and notify all parties of that fact. The date of docketing shall be the date that the Judge's report is made for purposes of section 12(j) of the Act (29 U.S.C. 661).

(2) On or after the date of docketing of the case, all pleadings or other documents that may be filed in the case shall be addressed to the Executive Secretary.

(3) In the event no Commission Member directs review of a decision on or before the thirtieth day following the date of docketing of the Judge's report, the decision of the Judge contained therein shall become a final order of the Commission.

[39 F.R. 40249, November 15, 1974]

2200.91—DISCRETIONARY REVIEW; PETITIONS FOR; STATEMENTS IN OPPOSITION

(a) A party aggrieved by the decision of a judge may submit a petition for discretionary review. An aggrieved party that fails to file a petition for such review by the Commission may be foreclosed from court review of any objection to the judge's decision. *Keystone Roofing Co., Inc. v. Dunlop*, 539 F. 2d 960 (3rd Cir. 1976).

[43 F.R. 4604, February 3, 1978.]

(b)

(1) Except as provided in paragraphs (b) (2) and (3) of this section, any petition must be received by the Judge at his office on or before the twentieth day following his mailing of a copy of the decision to the parties.

(2) When there is no objection by any party, when an expedited proceeding has been directed pursuant to §2200.101, or for other good cause, the Judge is empowered to prescribe a shorter time for filing petitions for discretionary review following the mailing of his decision.

(3) Petitions for review of a Judge's decision may be filed directly with the Executive Secretary subsequent to the filing of the Judge's report. Such petitions will be considered to the extent that time and resources permit. Parties filing such petitions should be aware that any action by a Commission Member directing review must be taken within thirty (30) days following the filing of the Judge's report.

(4) In the case of proposed settlements or other proposed dispositions by consent of all parties, petitions for discretionary review shall not be allowed, except for good cause shown.

[39 F.R. 40249, November 15, 1974.]

(c) A petition should contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The inclusion of precise citations to the record or legal authorities, as the case may be, will facilitate prompt review of the petition.

[43 F.R. 4604, February 3, 1978.]

(d) Failure to act on such petition within the review period shall be deemed a denial thereof.

(e) Statements in opposition to petitions for discretionary review may be filed at the times and places specified in this section for the filing of petitions for discretionary review. Any Statement shall contain a concise statement on each portion of the petition to which it is addressed.

[39 F.R. 40249, November 15, 1974.]

(f) An original and three copies of any petition or statement shall be filed with the Commission.

[43 F.R. 4604, February 3, 1978.]

2200.92—REVIEW BY THE COMMISSION

(a) Review is a matter of sound discretion of a member of the Commission.

(b) In exercising discretion, a Commission member will consider assertions of the following:

(1) A finding of material fact is not supported by a preponderance of the evidence.

(2) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission.

(3) A substantial question of law, abuse of discretion, or policy is involved.

(4) A prejudicial error of procedure was committed.

(c) When a petition for discretionary review is granted, review shall be limtied to the issues specified in the petition, unless the order for review expressly provides differently.

(d) At any time within 30 days after the filing of a decision of a judge, a case may also be directed for review by a member upon his own motion upon any ground that could be raised by a party, but the issues would normally be limited to novel questions of law or policy or questions involving conflict in Administrative Law Judges' decisions. Any direction for review shall state the issues with particularity. Except in extraordinary circumstances, the Commission's power to review is limited to issues of law or fact raised by the parties in the proceedings below. (Sec. 12(g) Public Law 91-596, 84 Stat. 1603-1605 (29 U.S.C. 661(f).)

[44 F.R. 70110, December 5, 1979.]

2200.93—BRIEFS BEFORE THE COMMISSION.

(a) **Requests for briefs.** The Commission ordinarily will request the parties to file briefs on issues before the Commission. When briefs are requested, a party may file a letter setting forth its arguments instead of filing a brief. The provisions of this rule shall apply to such letters.

(b) **Time for filing briefs.** When briefs are requested under paragraph (a), a briefing notice shall be issued to the parties at a time reasonably in advance of the date when the case is scheduled for disposition at a Commission meeting. Unless the briefing notice provides otherwise, the time for filing of briefs shall be as follows:

(1) **Appeal by one party.** A party whose petition for review or for interlocutory appeal is granted or whose interlocutory appeal is certified shall file a brief within 40 days after the date of the briefing notice. All other parties shall file briefs within 30 days after the brief of the petitioning or appealing party is served.

(2) **Appeals by two or more parties.** When petitions of two or more parties are directed for review, each such party shall file an initial brief addressing the issues on which it appeals within 40 days after the date of the briefing notice and may file a brief responding to the initial brief of the other party within 30 days after the initial brief of the other party or parties is served. This sequence of briefing shall be followed in the event that two or more parties' petitions for interlocutory appeal are granted or two or more parties's interlocutory appeals are certified.

(3) **Direction for review on the motion of a Commission member.** When no petition for discretionary review is granted and a member directs review of a Judge's decision on his own motion, all briefs shall be filed within 40 days after the date of the briefing notice.

(4) **Additional briefs.** Additional briefs shall not be allowed except by leave of the Commission.

(c) **Motion for extension of time for filing brief.** Any extension of time to file a brief shall not be granted except in extraordinary circumstances. A motion for extension of time to file a brief shall be filed within the time limit prescribed in paragraph (b) of this section and shall include the following information: When the brief is due; the number and duration of extensions of time that have been granted to each party; the length of extension being requested; the specific reasons for the extension being requested; and an assurance that the brief will be filed within the time extension requested.

(d) **Consequences of late filing of brief.** The Commission may decline to accept a brief that is not timely filed.

(e) **Length of brief.** Except by permission of the Commission, a brief shall contain no more than 35 pages of text.

(f) **Table of contents.** A brief in excess of 15 pages shall include a table of contents.

(g) **Failure to meet requirements.** The Commission may return briefs that do not meet the requirements of paragraphs (e) and (f) of this section.

(h) **Number of copies.** Five copies of a brief shall be filed. See § 2200.7(a).

[44 F.R. 70110, December 5, 1979.]

2200.94—STAY OF FINAL ORDER

(a) Any party aggrieved by a final order of the Commission may, while the matter is within the jurisdiction of the Commission, file a motion for a stay.

(b) Such motion shall set forth the reasons a stay is sought and the length of the stay requested.

(c) The Commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

[44 F.R. 70110, December 5, 1979.]

2200.95—ORAL ARGUMENT BEFORE THE COMMISSION

(a) Oral argument before the Commission ordinarily will not be allowed.

(b) In the event the Commission desires to hear oral argument with respect to any matter it will advise all parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least 10 days prior to the date set.

[44 F.R. 70110, December 5, 1979.]

SUBPART G—MISCELLANEOUS PROVISIONS

2200.100—SETTLEMENT.

(a) **Policy.** Settlement is permitted at any stage of the proceedings. Settlements submitted for consideration after the Judge's decision has been directed for review shall be filed the the Executive Secretary. A settlement proposal shall be approved when it is consistent with the provisions and objectives of the Act.

(b) **Requirements.** Every settlement proposal submitted to the Judge or Commission shall include, where applicable, the following:

(1) A motion to amend or withdraw a citation, notification of proposed penalty, notice of contest, or petition for modification of abatement;

(2) A statement that payment of the penalty has been tendered or a statement of a promise to pay; and

(3) A statement that the cited condition has been abated or a statement of the date by which abatement will be accomplished.

(c) **Filing; service and notice.** When a settlement proposal is filed with the Judge or Commission, it shall also be served upon represented and unrepresented affected employees in the manner prescribed for notices of contest in § 2200.7. Proof of service shall accompany the settlement proposal. A settlement proposal shall not be approved until at least 10 days following service of the settlement proposal on affected employees.

[44 F.R. 70110, December 5, 1979.]

2200.100a—WITHDRAWAL OF NOTICE OF CONTEST.

At any stage of the proceedings, a party may move to withdraw its notice of contest or any portion of its notice of contest. The motion shall include a statement that a promise of another party has not led to the motion to withdraw the notice of contest. The rule on settlements, § 2200.100, shall apply whenever a promise of another party has led to the party's motion to withdraw.

[44 F.R. 70110, December 5, 1979.]

2200.101—EXPEDITED PROCEEDING

(a) Upon application of any party or intervenor or upon his own motion, any Commissioner may order an expedited proceeding. Contests arising under §§ 2200.34 and 2200.35 shall be placed on a special docket and treated as expedited proceedings before Administrative Law Judges. Cases arising under these sections which are directed for review before the Commission shall also be placed on a special docket for review, and shall be treated as expedited proceedings under this section.

[43 F.R. 4504, February 3, 1978.]

(b) When such proceeding is ordered, the Executive Secretary shall notify all parties and intervenors.

(c) The Judge assigned in an expedited proceeding shall make necessary rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

2200.102—STANDARDS OF CONDUCT

All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the United States.

2200.103—EX PARTE COMMUNICATION

(a) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the Commission, including any member, officer, employee, or agent of the Commission who is employed in the decisional process, and any of the parties or intervenors.

(b) In the event such ex parte communication occurs, the Commission or the Judge may make such orders or take such action as fairness requires. Upon notice and hearing, the Commission may take such disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

2200.104—RESTRICTIONS AS TO PARTICIPATION BY INVESTIGATIVE OR PROSECUTING OFFICERS

In any proceeding noticed pursuant to the rules in this part, the Secretary shall not participate or advise with respect to the report of the Judge or the Commission decision.

2200.105—INSPECTION AND REPRODUCTION OF DOCUMENTS

(a) Subject to the provisions of law restricting public disclosure of information, any person may, at the offices of the Commission, inspect and copy any document filed in any proceeding.

(b) Costs shall be borne by such person.

2200.106—RESTRICTIONS WITH RESPECT TO FORMER EMPLOYEES

(a) No former employee of the Commission or the Secretary (including a member of the Commission or the Secretary) shall appear before the Commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment.

(b) No former employee of the Commission or the Secretary (including a member of the Commission or the Secretary) shall appear before the Commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which he was personally responsible during the period of his employment, unless 1 year has elapsed since the termination of such employment.

2200.107—AMENDMENTS TO RULES

The Commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein. Such suggestions should be addressed to the Commission at 1825 K Street, NW , Washington, D.C. 20006.

2200.108—SPECIAL CIRCUMSTANCES; WAIVER OF RULES

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the Commission may, upon application by party or intervenor, or on its own motion, after 3 days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

2200.109—PENALTIES

(a) All penalties assessed by the Commission are Civil.

(b) The Commission has no jurisdiction under § 17(e), (f), and (g) of the Act and will conduct no proceeding thereunder.

2200.110—OFFICIAL SEAL OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

The seal of the Commission shall consist of: A gold eagle outspread, head facing dexter, a shield with 13 vertical stripes superimposed on its breast, holding an olive branch in its claws, the whole superimposed over a plain solid white Greek cross with a green background, encircled by a white band edged in black and inscribed "Occupational Safety and Health Review Commission" in black letters.

SUBPART M—SIMPLIFIED PROCEEDINGS

2200.200—PURPOSE.

(a) The purpose of this subpart is to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so that parties before the Commission may save time and expense while preserving fundamental procedural fairness. The rules shall be construed and applied to accomplish these ends.

(b) Procedures under this subpart are simplified in a number of ways. The major differences between these procedures and those provided in subparts A through G of the Commission's rules of procedure are the following:

(1) Pleadings generally are not permitted or required. Early discussions among the parties will inform the parties of the legal and factual matters in dispute and narrow the issues to the extent possible.

(2) Discovery is generally not permitted.

(3) The Federal Rules of Evidence do not apply.

(4) Interlocutory appeals are not permitted.

2200.201—APPLICATION.

The rules in this subpart shall govern proceedings before an Administrative Law Judge when (a) the case is eligible for simplified proceedings under § 2200.202, (b) any party requests simplified proceedings, and (c) no party files an objection to the request.

2200.202—ELIGIBILITY FOR SIMPLIFIED PROCEEDINGS.

A case is eligible for simplified proceedings unless it concerns an alleged violation of section 5(a)(1) of the Act (29 U.S.C. 654(a)(1)) or an alleged failure to comply with a standard listed in table A.

Table A

All standards listed are found in title 29 of the Code of Federal Regulations.

§ 1910.94
§ 1910.95
§ 1910.96
§ 1910.97
§§ 1910.1000 to § 1910.1045, and any occupational health standard that may be added to subpart Z of part 1910.
§ 1926.52
§ 1926.53
§ 1926.54
§ 1926.55
§ 1926.57
§ 1926.800(c)

2200.203 COMMENCING SIMPLIFIED PROCEEDINGS.

(a) Requesting simplified proceedings.

(1) Who may request. Any party may request simplified proceedings.

(2) When to request. After the Commission receives an employer's or employees' notice of contest or petition for modification of abatement, the Executive Secretary shall issue a notice indicating that the case has been docketed. A request for simplified proceedings, if any, shall be filed within 10 days after the notice of docketing is received, unless the notice of docketing states otherwise.

(3) How to request. A simple statement is all that is necessary. For example, "I request simplified proceedings" will suffice. The request shall be filed with the Executive Secretary and served in the manner prescribed for notices of contest in § 2200.7.

(4) Effect of the request. For those cases eligible under § 2200.202, simplified proceedings are in effect when any party requests simplified proceedings and no party files a timely objection to the request.

(b) Objecting to simplified proceedings.

(1) Who may object. Any party may object to a request for simplified proceedings.

(2) When to object. An objection shall be filed within 15 days after the request for simplified proceedings is served.

(3) How to object. A simple statement is all that is necessary. For example, "I object to simplified proceedings" will suffice. An objection shall be filed with the Executive Secretary and served in the manner prescribed for notices of contest in § 2200.7.

(4) Effect of the objections. The filing of a timely objection shall preclude the institution of simplified proceedings.

(c) Notice.

(1) When the period for objecting to simplified proceedings expires and no objection has been filed, the Commission shall notify all parties that simplified proceedings are in effect.

(2) When a party files a timely objection to a request for simplified proceedings, the Commission shall notify all parties that the case shall continue under conventional procedures (Subparts A through G).

2200.204 FILING OF PLEADINGS.

(a) **Complaint and answer.** There shall be no complaint or answer in simplified proceedings. If the Secretary has filed a complaint under § 2200.33, a response to an employee contest under § 2200.35, or a response to a petition under § 2200.34, the complaint or response shall not be included in the record. No response to these documents shall be required.

(b) **Motions.** A primary purpose of simplified proceedings is to eliminate, as much as possible, motions and similar documents. A motion will not be viewed favorably if the subject of the motion has not been first discussed among the parties prior to the conference/hearing.

2200.205 DISCUSSION AMONG PARTIES.

Within a reasonable time before the conference/hearing, the parties shall meet, or confer by telephone, and discuss the following: Settlement of the case; the narrowing of issues; an agreed statement of issues and facts; defenses; witnesses and exhibits; motions; and any other pertinent matter.

2200.206 CONFERENCE/HEARING

(a) The Judge shall schedule and preside over a conference/hearing, which shall be divided into two segments: a conference and a hearing.

(b) **Conference.** At the beginning of the conference, the Judge shall enter into the record all agreements reached by the parties as well as defenses raised during the discussion set forth in § 2200.205. The parties and the Judge then shall attempt to resolve or narrow the remaining issues. At the conclusion of the conference, the Judge shall enter into the record any further agreements reached by the parties.

(c) **Hearing.** The Judge shall hold a hearing on any issue that remains in dispute at the conclusion of the conference. The hearing shall be in accordance with 5 U.S.C. 554.

(1) **Evidence.** Oral or documentary evidence shall be received, but the Judge may exclude irrelevant or unduly repetitious evidence. Testimony shall be given under oath. The Federal Rules of Evidence shall not apply.

(2) **Oral and written argument.** Each party may present oral argument at the close of the hearing. Parties wishing to present written argument shall notify the Judge at the conference/hearing so that the Judge may set a reasonable period for the prompt filing of written argument.

2200.207 REPORTER PRESENT; TRANSCRIPTS.

A reporter shall be present at the conference/hearing. An official verbatim transcript of the hearing shall be prepared and filed with the Judge. Parties may purchase copies of the transcript from the reporter.

2200.208 DECISION OF THE JUDGE.

(a) The Judge shall issue a written decision in accordance with § 2200.90.

(b) After the issuance of the Judge's decision, the case shall proceed in the conventional manner (Subparts A through G).

2200.209 DISCOVERY.

Discovery, including requests for admissions, shall not be allowed except by order of the Judge.

2200.210 INTERLOCUTORY APPEALS NOT PERMITTED.

Appeals to the Commission of a ruling made by a Judge which is not the Judge's final disposition of the case are not permitted.

2200.211 APPLICABILITY OF SUBPARTS A THROUGH G.

Sections 2200.6, 2200.33, 2200.34(d)(4), 2200.35, 2200.36, 2200.38, and 2200.75 shall not apply to simplified proceedings. All other rules contained in subparts A through G of the Commission's rules of procedure shall apply when consistent with the rules in this subpart governing simplified proceedings.

[44 F.R. 70110, December 5, 1979.]

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Chapter XX—Occupational Safety and Health Review Commission

PART 2300

REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

2300.1 Purpose and scope.
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2300.3 Delegation of authority.
2300.4 Information policy.
2300.5 Copies of records.
2300.6 Procedure for obtaining information.
2300.7 Processing requests.
2300.8 Maintenance of statistics.

AUTHORITY: Sec. 12(g), Pub. L. 91-596, 84 Stat. 1604 (29 U.S.C. 661(f)), 5 U.S.C. 552 as amended November 21, 1974 (Pub. L. 93-502).

SOURCE: The provisions of this Part 2300 appear at 40 F.R. 5779, February 7, 1975, unless otherwise noted.

2300.1—PURPOSE AND SCOPE

The purpose of the provisions of this Part is to provide procedures to implement the Freedom of Information Act, 5 U.S.C. section 552, as amended November 21, 1974 (Pub. L. 93–502). The following provisions are applicable only to such items of information as relate to the agency or are items within its custody. They are not applicable to the rights of parties appearing in adversary proceedings before the Commission to obtain discovery from an adverse party. Such matters are governed by the Commission's Rules of Procedure which are published at 29 CFR 2200.1 et seq.

2300.2—DESCRIPTION OF AGENCY

(a) The Occupational Safety and Health Review Commission (OSAHRC) adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970 (84 Stat. 1590, 29 U.S.C. 651-677). Decisions of the Commission on such actions are issued only after the parties to the case are afforded an opportunity for a hearing in accordance with section 554 of Title 5, United States Code. All such hearings are conducted by an OSAHRC Administrative Law Judge at a place convenient to the parties and are open to the public.

(b) Except insofar as its decisions or its Rules of Procedure may be so construed, the Review Commission does not issue substantive rules of general applicability, statements of general policy or interpretations of general applicability. The Rules of Procedure appear in 29 CFR Part 2200.

[40 F.R. 54567, November 25, 1975.]

2300.3—DELEGATION OF AUTHORITY

The Executive Secretary is delegated the exclusive authority to act upon all requests for information, documents and records which are received from any person or organization.

[40 F.R. 54567, November 25, 1975.]

2300.4—INFORMATION POLICY

(a) Except for matters specifically excluded by section 552(b) of Title 5, United States Code or other applicable statute, all documents and records maintained by this agency or within the custody thereof shall be available to the public upon request filed in accordance with these regulations.

(b) Any person may examine and copy any such document or record of this agency (or within the custody thereof) under conditions prescribed by the Executive Secretary at any time during normal operating hours so long as it does not interfere with the trial or disposition of a pending case.

[40 F.R. 54567, November 25, 1975.]

(c) Commission decisions are presently published from April 28, 1971 to October 31, 1975 in Volumes 1–20 of the OSAHRC Reports. Commission decisions issued subsequent to October 31, 1975 will be made available for public inspection and copying in accordance with these rules. In addition Commission decisions are now published by at least two private publishing houses.

(d) [Revoked].

(e) It shall be the responsibility of the Executive Secretary to insure that comprehensive and accurate indices to Commission decisions are compiled.

(f) Copies of commission decisions and indices may be obtained from the following offices:

	Address	Telephone
National office	1825 K St. NW., Washington, D.C. 20006	202-634-7960
Regional offices:		
Atlanta, Ga.	1365 Peachtree St., NE., Room 400, Atlanta, Ga. 30309	404-526-5197
Boston, Mass	100 Summer St., Suite 1521, Boston, Mass. 02110	617-223-3757
Chicago, Ill	55 East Monroe St., Room 1530, Chicago, Ill. 60603	312-353-4634
Dallas, Tex	1507 Pacific Ave., Fidelity Union Tower, Suite 400 Dallas, Tex. 75201.	214-749-7171
Denver, Colo	1050 17th St., Prudential Bldg., Suite 1718, Denver, Colo. 80202	303-837-2281
Los Angeles, Calif	15000 Aviation Blvd., Room 2E2, Lawndale, Calif. 90260	213-536-6468
New York, N.Y.	1515 Broadway, Room 3800, New York, N.Y. 10036	212-971-7985
Seattle, Wash	625 Logan Bldg., 5th Ave. at Union, Seattle, Wash. 98101	206-442-5744
St. Louis, Mo.	1114 Market St., Room 606, St. Louis, Mo. 63101	314-425-5071
Washington, D.C.	6525 Belcrest Rd., Presidential Bldg., Suite 1005, Hyattsville, Md. 20782	301-436-8870

[40 F.R. 54567, November 25, 1975.]

2300.5—COPIES OF RECORDS

(a) Copies of documents or records of this agency, or within the custody thereof, or information respecting the time and place of hearings will be furnished to any person or organization requesting the same in accordance with these regulations.

[40 F.R. 54567, November 25, 1975.]

(b) The Executive Secretary may charge a fee for searching for and copying such documents or records.

(1) The fee for copies shall be $.10 per copy per page.

(2) The search charge shall be $5.00 per hour.

[40 F.R. 54567, November 25, 1975.]

(c) All charges may be waived or reduced whenever it is in the public interest to do so.

(d) Copies of documents (including the hearing transcript) which have been filed in an OSAHRC case which, at the time of the request therefor, is pending in any United States Court should be requested from such Court.

(e) Requests by parties for copies of transcripts of hearings, which are made by or on behalf of any party to such hearings, shall be made to the official hearing reporter. If such a party is given the opportunity to purchase the transcript from the official reporter but does not do so, the Executive Secretary will respond affirmatively to a request for a copy or copies of the same submitted by such party or representative but may charge for this service at a rate equal to that which would have been charged by the official reporter at the time such party was given the opportunity to purchase such transcript.

[40 F.R. 54567, November 25, 1975.]

2300.6—PROCEDURE FOR OBTAINING INFORMATION

(a) All persons or organizations requesting any information from OSAHRC or any record or document of this agency (or in the custody thereof) shall submit such request in writing to the Executive Secretary OSAHRC, 1825 K Street, NW, Washington, D.C. 20006.

[40 F.R. 54567, November 25, 1975.]

(b) All such requests should be clearly and prominently identified as a request for information under the Freedom of Information Act, and if submitted by mail or otherwise submitted in an envelope or other cover, should be clearly and prominently identified as such on the envelope or other cover.

(c) If a request does not comply with the provisions of the preceding paragraph, it shall not be deemed received by OSAHRC until the time it is actually received by the Executive Secretary.

[40 F.R. 54567, November 25, 1975.]

2300.7—PROCESSING REQUESTS

(a) The Executive Secretary shall respond promptly to all requests for information or for copies of records or documents which are submitted in accordance with this regulation but in no event shall such response be furnished later than ten (10) working days following receipt of such request.

(b) A request that is expected to involve assessed fees in excess of $50.00 will not be deemed to have been received until the requester is advised of the anticipated cost and agrees to bear it.

(c) In the event any request for information or for a copy of any document or record is denied, the Executive Secretary shall, within 10 working days of the receipt of the request, notify the requester of the denial. Such denial shall specify the reason therefor and also advise that the denial may be appealed as specified hereinafter.

(d) Whenever any request for information, or for a copy of any document or record is denied by the Executive Secretary, an appeal may be filed with the Executive Director of the Occupational Safety and Health Review Commission within 30 working days after the requester receives notification that the request has been denied. The appeal shall be in writing and the Executive Director shall respond in the same in accordance with section 552(a) (6) of Title 5, United States Code, and within the time period set forth therein.

(e) Any person in the employ of this agency who receives request for any information, document or record of this agency or within the custody thereof shall advise the requester to address such request to the Executive Secretary. If the request so received is in writing it shall be immediately referred for action to the Director of Information and Publications.

[40 F.R. 54567, November 25, 1975.]

2300.8—MAINTENANCE OF STATISTICS

(a) The Executive Secretary shall maintain records of

(1) The total amount of fees collected by this agency pursuant to this part;

(2) The number of denials of requests for records made pursuant to this part and the reason for each;

(3) The number of appeals from such and spirit of section 552 of Title 5, United together with the reason(s) for the action upon each appeal that results in a denial of information;

(4) The name(s) and title(s) or position(s) of each person responsible for each denial of records requested and the number of instances of participation for each;

(5) The results of each proceeding conducted pursuant to section 552(a) (4)(F) of Title 5, United States Code, including a report of the disciplinary action against the official or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(6) A copy of every rule made by this agency affecting or in implementation of section 552 of Title 5, United States Code;

(7) A copy of the fee schedule for copies of records and documents requested pursuant to this regulation; and

(8) All other information which indicates efforts to administer fully the foregoing rules.

(b) The Executive Secretary shall annually, within 60 days following the close of each calendar year, prepare a report covering each of the categories of records to be maintained in accordance with the foregoing and submit the same to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress.

[40 F.R. 54567, November 25, 1975.]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER G—OCCUPATIONAL SAFETY AND HEALTH RESEARCH AND RELATED ACTIVITIES

PART 80—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

SUBPARTS A–C [RESERVED]

SUBPART D—TUITION FEES FOR DIRECT TRAINING

80.41 Applicability.
80.42 Definitions.
80.43 Tuition fees.
80.44 Schedule of fees.
80.45 Procedure for payment.
80.46 Refunds.

AUTHORITY: Sec. 501, 65 Stat. 290; 31 U.S.C. 483a.

SUBPART D—TUITION FEES FOR DIRECT TRAINING

80.41—APPLICABILITY

The provisions of this subpart set forth the policies of the National Institute for Occupational Safety and Health with respect to its charging fees for direct training in occupational safety or health.

80.42—DEFINTIONS

Any term not defined herein shall have the same meaning as given it in the act. As used in this subpart:

(a) "Act" means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(b) "Direct training" means all technical training courses conducted directly by NIOSH for personnel of State and local governmental agencies, other Federal agencies, private industries, universities, and other non-NIOSH agencies and organizations.

(c) "NIOSH" or "Institute" means the National Institute for Occupational Safety and Health.

(d) "Registration Office" means the Direct Training Registration Office, NIOSH, 1014 Broadway, Cincinnati, Ohio 45202.

80.43—TUITION FEES

In accordance with the provisions of the subpart, the National Institute for Occupational Safety and Health will charge fees for all students attending NIOSH direct training courses which commence on or after July 1, 1973.

80.44—SCHEDULE OF FEES

(a) Tuition fees will be computed on the basis of the cost to the Government for the Institute's participation in the course, as determined by the Director of the Institute.

(b) Total tuition charges for each course will be set forth in the course announcement.

80.45—PROCEDURE FOR PAYMENT

(a) Applications for direct training courses shall be completed and submitted to the registration office in accordance with the instructions issued by that office.

(b) Federal agency personnel shall, upon notification of their acceptance, submit a letter identifying the agency and office to be billed, the agency order number, and any code numbers or other information necessary for billing purposes.

(c) All other applicants shall, upon notification of their acceptance by NIOSH, submit a check payable to the National Institute for Occupational Safety and Health in the amount indicated by the course announcement prior to the commencement of the training course.

80.46—REFUNDS

An applicant may withdraw his application and receive full reimbursement of the fee provided that written notification to the registration office is mailed no later than 10 days before the commence of the course for which registration has been submitted.

[38 F.R. 16644, June 25, 1973]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER G—OCCUPATIONAL SAFETY AND HEALTH RESEARCH AND RELATED ACTIVITIES

PART 84

CERTIFICATION OF GAS DETECTOR TUBE UNITS

REVOKED

[43 F.R. 33247, July 31, 1978.]

Pages 438 thru 448 deleted.

Title 42—Public Health

CHAPTER 1—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER G—OCCUPATIONAL SAFETY AND HEALTH RESEARCH AND RELATED ACTIVITIES

PART 85

REQUESTS FOR HEALTH HAZARD EVALUATIONS

85.1 Applicability.
85.2 Definitions.
85.3 Procedures for requesting health hazard evaluations.
85.4 Acting on requests.
85.5 Authority for investigations.
85.6 Advance notice of visits.
85.7 Conduct of investigations.
85.8 Provision of suitable space for employee interviews and examinations; identification of employees.
85.9 Representatives of employers and employees; employee requests.
85.10 Imminent dangers.
85.11 Notification of determination to employers, affected employees, and Department of Labor.
85.12 Subsequent requests for health hazard evaluations.

AUTHORITY: The provisions of this Part 85 issued under the authority of section 8(g), 84 Stat. 1600; 29 U.S.C. 657(g).

SOURCE: The provisions of this Part 85 appear at 37 F.R. 23639, Nov. 7, 1972, unless otherwise noted.

85.1—APPLICABILITY

The provisions of this Part 85 are applicable to requests submitted by any employer or authorized representative of employees pursuant to § 20(a)(6) of the Occupational Safety and Health Act of 1970 for a determination of potentially toxic effects of any substance normally used or found in any place of employment to which the Act is applicable. This Part 85 is not intended to preclude the use of other channels of communication with the National Institute for Occupational Safety and Health to obtain information and technical assistance related to toxic substances.

85.2—DEFINITIONS

Any term defined in the Occupational Safety and Health Act of 1970 and not defined below shall have the meaning given it in the Act. As used in this part:

(a) "Act" means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.).

(b)"Authorized representative of employees" means any person or organization meeting the conditions specified in § 85.3(b)(4)(i), (ii), or (iii).

(c) "Investigation" includes a physical inspection of the place of employment pursuant to § 8 of the Act and means such inspection, sampling, observations, and other measurements reasonably necessary to determine whether any substance found in the place of employment for which the request is made has potentially toxic effects in such concentrations as used or found.

(d) "Health hazard evaluation" means the investigation and the determination of potentially toxic effects of any substance normally used or found in any place of employment to which the Act is applicable.

(e) "Place of employment" means any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by any employee of an employer.

(f) "NIOSH" means the National Institute for Occupational Safety and Health.

(g) "NIOSH officer" means a person authorized by NIOSH to conduct investigations.

(h) "Substance" means any chemical or biological agent which has the potential to produce toxic effects.

(i) "Toxic effects" are those which result in short- or long-term disease, bodily injury, affect health adversely, or endanger the life of man.

85.3—PROCEDURES FOR REQUESTING HEALTH HAZARD EVALUATIONS

(a) A request for a health hazard evaluation should be addressed to the National Institute for Occupational Safety and Health, Hazard Evaluation Services Branch, U.S. Department of Health, Education, and Welfare, Cincinnati, Ohio 45202.

(b) A request for such an evaluation shall:

(1) Be in writing and signed by (i) the employer in whose place of employment the substance is normally found, or (ii) by an authorized representative of employees who are employed by such employer;

(2) State the requester's name, address, and telephone number if any; the address of the place of employment where the substance is normally found; the specific workplace or workplaces involved, and the specific process or type of work which is the source of the substance or in which such substance is used;

(3) Specify with reasonable particularity the nature of the conditions, circumstances, or other grounds on which the request is made;

(4) State, where the requester is other than the employer:

(i) That he is an authorized representative, or an officer, of the organization representing the employees for purposes of collective bargaining; or

(ii) That he is an employee of the employer and is authorized by two or more employees employed in the workplace where the substance is normally found to represent them for purposes of the Act. Each such authorization shall be in writing and included in the request; or

(iii) That he is one of three or less employees employed in the workplace where the substance is normally found.

(5) Indicate whether the requester or those persons who have authorized the requester to represent them desire that NIOSH not reveal their names to the employer.

(c) The request shall, if the information is known to the requester:

(1) Identify the potentially toxic substance or substances involved;

(2) State the trade name, chemical name, and the manufacturer of each substance;

3) State whether the substance or the container of such substance has a warning label; and

(4) Specify the physical form of the substance, number of people exposed, length of exposure (hours/day), and occupations of exposed employees.

NOTE: The National Institute for Occupational Safety and Health has developed a form, entitled "Request for Health Hazard Evaluation," to assist persons in requesting evaluations under this part. Forms are available upon request from NIOSH, Hazard Evaluation Services Branch, Cincinnati, Ohio 45202, or from the NIOSH representative in any Regional Office of the Department of Health, Education, and Welfare.

85.4—ACTING ON REQUESTS

(a) When a request meeting the requirements of this part has been submitted in accordance therewith and designated employees of NIOSH have concluded that there is reasonable cause to believe that an investigation is warranted, a NIOSH officer will inspect the place of employment, collect samples where appropriate and perform such tests as necessary, including medical examinations of employees, to the conduct of a health hazard evaluation.

(b) If there is no reasonable cause to conclude that an investigation is warranted, the requester shall be notified in writing of such decision.

(c) Investigations shall be conducted in accordance with the requirements of this part.

85.5—AUTHORITY FOR INVESTIGATIONS

(a) Employees of the National Institute for Occupational Safety and Health who have been issued the NIOSH official credentials (consisting of HSM Form 599–2 entitled "Identification Record") are authorized by the Director, NIOSH, for the purposes of § 20(a)(6) of the Act and pursuant to § 8, to enter without delay and at reasonable times any place of employment for which a request has been submitted, to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein as may be directly related to the determination whether any substance normally found in the place of employment for which a request has been submitted has potentially toxic effects in such concentrations as used or found. In connection with any such investigation, such NIOSH employees may question privately any employer, owner, operator, agent, or employee and review records required by the Act and regulations, and other related records.

(b) Areas containing information which is classified by any agency of the U.S. Government in the interest of national security will be inspected only by NIOSH employees who have obtained the appropriate security clearance.

85.6—ADVANCE NOTICE OF VISITS

(a) Advance notice of visits to the place of employment may be given to expedite a thorough and effective investigation. Advance notice will not be given when, in the judgment of the NIOSH officer, giving such notice would adversely affect the validity and effectiveness of the investigation.

(b) Where a request in accordance with this part has been made by an authorized representative of employees, advance notice in accordance with paragraph (a) of this section will be given by NIOSH to the requester, the representative of the employees for purposes of collective bargaining if such representative is other than the requester, and to the employer.

(c) Where a request in accordance with this part has been made by any employer, advance notice will be given by NIOSH to the employer. Upon the request of the employer, NIOSH will inform the authorized representative of employees of the visit: *Provided,* The employer furnishes NIOSH in writing with the identity of such representative and with such information as is necessary to enable NIOSH promptly to inform such representative of the visit.

85.7—CONDUCT OF INVESTIGATIONS

(a) Prior to beginning an investigation, NIOSH officers shall present their credentials to the owner, operator, or agent in charge at the place of employment, explain the nature, purpose, and scope of the investigation and the records specified in § 85.5 which they wish to review. Where the investigation is the result of a request submitted by an authorized representative of employees, a copy of the request shall be provided to the employer, except where the requester or any person authorizing the requester pursuant to § 85.3(b)(4)(ii) has indicated that NIOSH not reveal his name to the employer, in which case, a summary of the basis for the request shall be provided to the employer.

(b) At the commencement of an investigation, the employer should precisely identify information which can be obtained in the workplace or workplaces to be inspected as trade secrets. If the NIOSH officer has no clear reason to question such identification, such information shall not be disclosed except in accordance with the provisions of § 20(a)(6) and § 15 of the Act. However, if NIOSH at any time questions such identification by an employer, not less than 15 days' notice to an employer shall be given of the intention to remove the trade secret designation from such information. The employer may within that period submit a request to the Director, NIOSH, to reconsider this intention and may provide additional information in support of the trade secret designation. The Director, NIOSH, shall notify the employer in writing of the decision which will become effective no sooner than 15 days after the date of such notice.

(c) NIOSH officers are authorized to collect environmental samples and samples of substances, to take or obtain photographs related to the purpose of the investigation, employ other reasonable investigative techniques, including medical examinations of employees with the consent of such employees, and to question privately any employer, owner, operator, agent, or employee. The employer shall have the opportunity to review photographs taken or obtained for the purpose of identifying those which contain or might reveal a trade secret.

(d) NIOSH officers shall comply with all safety and health rules and practices at the place of employment being investigated, and they shall provide and use appropriate protective clothing and equipment. In situations requiring specialized or unique types of protective equipment, such equipment shall be furnished by the employer.

(e) The conduct of investigations shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

85.8—PROVISION OF SUITABLE SPACE FOR EMPLOYEE INTERVIEWS AND EXAMINATIONS; IDENTIFICATION OF EMPLOYEES

An employer shall, on request of the NIOSH officer, provide suitable space, if such space is reasonably available, to NIOSH to conduct private interviews with, and examinations of, employees. NIOSH officers shall consult with the employer as to the time and place of the medical examination and shall schedule such examinations so as to avoid undue disruption of the operations of the employer's establishment. NIOSH shall conduct, and assume the medical costs of, examinations conducted under this part.

85.9—REPRESENTATIVES OF EMPLOYERS AND EMPLOYEES; EMPLOYEE REQUESTS

(a) NIOSH officers shall be in charge of investigations. Where the request for a health hazard evaluation has been made by an authorized representative of employees, a representative of the employer and a representative authorized by his employees who is an employee of the employer shall be given an opportunity to accompany the NIOSH officer during the initial physical inspection of any workplace for the purpose of aiding the investigation by identifying the suspected hazard. The NIOSH officer may permit additional employer representatives and such additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the investigation. However, if in the judgment of the NIOSH officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer is reasonably necessary to the conduct of an effective and thorough investigation of the workplace, such third party may accompany the NIOSH officer during the inspection: *Provided, however,* That access by such persons to areas described in paragraph (d) of this section shall be in accordance with the requirements of such provision, and access to areas described in paragraph (e) of this section shall be with the consent of the employer. A different employer and employee representative may accompany the officer during each different phase of an inspection if this will not interfere with the conduct of the investigation.

(b) NIOSH officers are authorized to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this section. If there is no authorized representative of employees, or if the NIOSH officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters directly related to the health hazard evaluation.

(c) NIOSH officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly physical inspection.

(d) With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany an officer in areas containing such information.

(e) Upon request of an employer, any representative authorized under this § 85.9 by employees in any area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area.

85.10—IMMINENT DANGERS

Whenever, during the course of, or as a result of, an investigation under this part, the NIOSH officer believes that there is a reasonable basis for an allegation of an imminent danger, NIOSH will immediately advise the employer and those employees who appear to be in immediate danger of such allegation and will inform appropriate representatives of the Department of Labor or the State agency designated under § 18(b) of the Act.

85.11—NOTIFICATION OF DETERMINATION TO EMPLOYERS, AFFECTED EMPLOYEES AND DEPARTMENT OF LABOR

(a) A determination made pursuant to section 20(a)(6) of the Act will, as a minimum: (1) identify and set forth, where appropriate, the concentrations of the substance(s) found in the place of employment and the conditions of use, and (2) state whether such substance(s) has potentially toxic effects in such concentrations, as well as the basis for such judgments.

(b) Copies of the determination will be mailed to the employer and to the authorized representatives of employees.

(c) Except as hereinafter provided, the employer shall post a copy of the determination for a period of 30 calendar days at or near the workplace(s) of affected employees. The employer shall take steps to ensure that the posted determinations are not altered, defaced, or covered by other material during such period. The employer will not be required to post the determination if the employer requests that copies of the determination be mailed to affected employees and furnishes NIOSH with a list of the names and mailing addresses of the employees employed in the workplace(s) designated by the NIOSH officer. In the latter event, NIOSH will mail such copies to affected employees at the mailing addresses provided by the employer.

(d) For purposes of this section, the term "affected employees" means those employees determined by NIOSH to be exposed to the substance(s) which is the subject of the health hazard evaluation.

(e) Copies of all determinations will be forwarded to the Department of Labor and the appropriate State agency designated under § 18(b) of the Act. If the Secretary of Health, Education, and Welfare determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard promulgated under § 6 of the Act, the Secretary of Health, Education, and Welfare will immediately submit such determination to the Secretary of Labor together with all pertinent criteria.

85.12—SUBSEQUENT REQUESTS FOR HEALTH HAZARD EVALUATIONS

Where a request is received for a health hazard evaluation in a place of employment in which an evaluation under this part previously has been made, the Secretary may make a subsequent investigation if, as a result of the passage of time or additional information, he deems such a subsequent investigation consistent with the purpose of the Act.

PART 86

GRANTS FOR EDUCATION PROGRAMS IN OCCUPATIONAL SAFETY AND HEALTH

SUBPART A—GENERAL

86.1 Applicability.
86.2 Definitions.
86.3 Inventions and discoveries.
86.4 Publications and copyrights.
86.5 Grant appeals procedure.

SUBPART B—OCCUPATIONAL SAFETY AND HEALTH TRAINING GRANTS

86.10 Nature and purpose of training grants.
86.11 Eligibility.
86.12 Application for a grant.
86.13 Project requirements.
86.14 Evaluation and grant award.
86.15 Payments.
86.16 Use of project funds.
86.17 Nondiscrimination.
86.18 Grantee accountability.
86.19 Human subjects: animal welfare.
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86.21 Applicability of 45 CFR Part 74.

SUBPART C—OCCUPATIONAL SAFETY AND HEALTH DIRECT TRAINEESHIPS

86.30 Nature and purpose of direct traineeships.
86.31 Eligibility; minimum requirements.
86.32 Application for direct traineeship.
86.33 Human subjects; animal welfare.
86.34 Evaluation and award of direct traineeships.
86.35 Payments.
86.36 Duration and continuation.
86.37 Terms and conditions.
86.38 Accountability.
86.39 Termination of direct traineeship.

AUTHORITY: The provisions of this Part 86 issued under sec. 8 (g), 84 Stat. 1600; 29 U.S.C. 657 (g), sec. 21 (a), 84 Stat. 1612; 29 U.S.C. 670(a).

SOURCE: The provisions of this Part 86 appear at 40 F.R. 29076, July 10, 1975 unless otherwise noted.

REGULATIONS AND PROCEDURES

SUBPART A—GENERAL

86.1—APPLICABILITY

The regulations of this part are applicable to the award of training grants and direct traineeships pursuant to section 21 (a) (1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670 (a) (1)) to assist in providing an adequate supply of qualified personnel to carry out the purposes of the Act.

86.2—DEFINITIONS

Any term not defined herein shall have the same meaning as given it in the Act. As used in this part:

(a) "Act" means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(b) "Nonprofit agency or institution" means an agency, corporation, or association no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(c) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(d) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(e) "Training" means job-specific skill development, the purpose of which is to provide qualified personnel to carry out the purposes of the Act.

86.3—INVENTIONS AND DISCOVERIES

Any grant award pursuant to § 86.14 or § 86.33 is subject to the regulations of the Department of Health, Education, and Welfare as set forth in 45 CFR Parts 6 and 8, as amended. Such regulations shall apply to any activity for which grant funds are in fact used whether within the scope of the project as approved or otherwise. Appropriate measures shall be taken by the grantee and by the Secretary to assure that no contracts, assignments or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the supported activity are aware of and comply with such obligations. Laboratory notes, related technical data, and information pertaining to inventions and discoveries shall be maintained for such periods and filed with or otherwise made available to the Secretary, or those he may designate at such times and in such manner, as he may determine necessary to carry out such Department regulations.

86.4—PUBLICATIONS AND COPYRIGHTS

Except as may otherwise be provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films or similar materials developed or resulting from a project supported by a grant under this part, subject, however, to a royalty-free, nonexclusive, and irrevocable license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose, of such materials and to authorize others to do so.

86.5—GRANT APPEALS PROCEDURE

The informal Public Health Service procedure for resolution of post-award grant disputes set forth in subpart D of Part 50 of this title and the Department post-award grant appeals procedure in 45 CFR Part 16 are applicable to any award made pursuant to this part.

SUBPART B—OCCUPATIONAL SAFETY AND HEALTH TRAINING GRANTS

86.10—NATURE AND PURPOSE OF TRAINING GRANTS

(a) Long-term training project grant. A long-term training project grant is an award of funds to an eligible institution or agency, hereinafter called the "grantee," to pay part or all of the costs of organized identifiable activities, hereinafter termed the "project," that are undertaken to establish, strengthen, or expand graduate, undergraduate, or special training, of persons in the field of occupational safety and health. Such grants may be used to support training in, for example, occupational medicine, industrial hygiene, industrial nursing and occupational safety engineering and the training of technicians and paraprofessionals in such areas.

(b) Short-term training project grant. A short-term training project grant is an award of funds to an eligible institution or agency, hereinafter called the "grantee," to pay part or all of the costs of organized identifiable activities, hereinafter termed the "project" that are undertaken to provide intensive training programs of less than 1 year for any one or a combination of the following purposes:

(1) To provide specialized instruction for occupational safety and health professional or career personnel which will increase their competence in an area in their respective fields.

(2) To prepare or expand the capabilities of occupational safety and health professional or career personnel for leadership roles as administrators or supervisors, and

(3) To prepare or expand the teaching capabilities of occupational safety and health professionals and career personnel.

86.11—ELIGIBILITY

(a) Eligible applicants. Any public or nonprofit educational or training agency or institution located in a State is eligible to apply for a grant under this subpart.

(b) Projects eligible for long-term or short-term training grants. Any project found by the Secretary to be a long-term training project within the meaning of §86.10 (a) or a short-term training project within the meaning of § 86.10 (b), shall be eligible for a grant award.

86.12—APPLICATION FOR A GRANT

(a) An application for a grant under this subpart shall be submitted to the Secretary at such time and in such form and manner as the Secretary may prescribe.[1] The application shall contain a full and adequate description of the project and of the manner in which the applicant intends to conduct the project in accordance with the requirements of this subpart, and a budget and justification of the amount of grant funds requested, and such other pertinent information as the Secretary may require.

(b) The application shall be executed by an individual authorized to act for the applicant and to assume for the applicant the obligations imposed by the regulations of this subpart and any additional conditions of the grant.

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[1] Applications and instructions may be obtained from the Office of Extramural Activities, National Institute for Occupational Safety and Health, U.S. Post Office & Courthouse, Cincinnati, Ohio 45202.

86.13—PROJECT REQUIREMENTS

(a) An approvable application for a long-term training grant must contain each of the following, unless the Secretary determines that the applicant has established good cause for its omission.

(1) Provision of a method for development of the training curriculum and any attendant training materials and resources;

(2) Provision of a method for implementation of the needed training;

(3) Provision of an evaluation methodology, including the manner in which such methodology will be employed, to measure the achievement of the objectives of the training program; and

(4) Provision of a method by which trainees will be selected.

(b) In addition to the requirements set forth in paragraph (a) of this section, an approvable application for a short-term training grant must contain each of the following, unless the Secretary determines that the applicant has established good cause for its omission.

(1) Provision of a methodology to assess the particular skills, or knowledge that prospective trainees need to develop;

(2) Provision of at least 18 hours of formal instruction for a period of not less than 2½ days and not more than 1 academic year; and

(3) Assurances that no portion of the Federal funds will be used for (i) inservice training courses designed only for employees of a single agency, institution, or organization; (ii) correspondence courses; (iii) regular courses usually given for academic credit; or (iv) training the grantee's financial officers, program director, or the official who executed the application.

86.14—EVALUATION AND GRANT AWARD

Within the limits of funds available for such purpose the Secretary may award grants to assist in the establishment and operation of those projects which will in his judgment best promote the purposes of section 21 (a) (1) of the Act, taking into account:

(a) In the case of long-term training grants:

(1) The need for training in the area or areas of study outlined in the application;

(2) The degree to which the proposal represents a strengthening or expansion of the applicant's program in such areas;

(3) The record of the applicant's effectiveness in training in these or related areas as indicated, among other things, by the placement of its graduates;

(4) The competence of the project staff in relation to the service to be provided;

(5) The reasonableness of the budget in relation to the proposed project;

(6) The applicant's resources, including equipment, facilities, and funds, available for the project;

(7) The current and potential availability of students in the area of study to be offered and their prospective employability as a result of the proposed training;

(8) The extent to which the applicant expects to absorb faculty positions initiated as a result of the grant; and

(9) The degree to which the project adequately provides for the requirements set forth in § 86.13 (a).

(b) In the case of short-term training:

(1) The relationship of the contents of the course to the current and emergency training needs to carry out the purposes of the Act:

(2) The qualifications of the instructional staff;

(3) The speed with which the training can be put to use by the persons proposed to be trained;

(4) The reasonableness of the budget in relation to the proposed project;

(5) The success of previous offerings of this course, or related courses;

(6) Evidence of ability to recruit trainees and the estimated number to be enrolled during each course offering; and

(7) The degree to which the proposed project adequately provides for the requirements set forth in § 86.13 (b).

(c) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for all or a designated portion of direct project costs plus an additional amount for indirect costs, if any, which will be calculated by the Secretary either

(1) on the basis of his estimate of the actual indirect costs reasonably related to the project, or

(2) on the basis of a percentage, not to exceed 8 percent, of all, or a portion of, the estimated direct costs of the project when there are reasonable assurances that the use of such percentage will not exceed the approximate actual indirect costs. Such award may include an estimated provisional amount for indirect costs or for designated direct costs (such as travel or supply costs) subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the amount properly expended by the grantee for provisional items has been determined by the Secretary.

(d) All grant awards shall be in writing, shall set forth the amount of funds granted and the period for which support is recommended.

(e) Neither the approval of any project nor any grant award shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved project or portion thereof. For continuation support, grantees must make separate application annually at such times and in such forms as the Secretary may direct.

86.15—PAYMENTS

The Secretary shall from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement for expenses incurred or to be incurred in the performance of the project to the extent he determines such payments necessary to promote prompt initiation and advancement of the approved project.

86.16—USE OF PROJECT FUNDS

(a) Any funds granted pursuant to this subpart as well as other funds to be used in performance of the approved project shall be expended solely for carrying out the approved project in accordance with section 21 (a) of the Act, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles prescribed by Subpart Q of 45 CFR Part 74.

(b) Prior written approval by the Secretary of revision of the budget and project plan is required whenever there is to be a significant change in the scope or nature of project activities, which in the case of short term training grants, includes any change in the course dates or training sites.

(c) Grant funds are available for trainee stipends and for tuition, including fees and instructional materials, for travel costs related to training allowances. Stipends and allowances may not be increased or be paid beyond the term of the stipend on account of vacation an individual might have been entitled to but did not take.

(d) Stipends may only be paid to a trainee who is a citizen of the United States, an alien lawfully admitted to the United States for permanent residence, or a permanent resident of Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(e) In the case of short term training grants, stipends may not be paid to persons receiving lecture fees, salary, travel expenses, or payment in any form as members of the course instructional staff.

(f) Grant funds used for alterations and renovations shall be subject to the condition that the grantee shall comply with the requirements of Executive Order 11246, as amended, and with the applicable regulations prescribed pursuant thereto.

86.17—NONDISCRIMINATION

(a) Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) and in particular section 601 of such Act which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such title VI, which applies to grants made under this subpart, has been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80).

(b) Attention is called to the requirements of title IX of the Education Amendments of 1972 (86 Stat. 373, 20 U.S.C. 1681 et seq.) and in particular to section 901 of such Act which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

(c) Attention is called to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

86.18—GRANTEE ACCOUNTABILITY

(a) Accounting for grant award payments. All payments made by the Secretary shall be recorded by the grantee in accounting records separate from the records of all other grant funds, including funds derived from other grant awards. With respect to each approved project the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available evidence satisfactory to the Secretary of expenditures for direct and indirect costs meeting the requirements of this part: *Provided, however,* That when the amount awarded for indirect costs was based on a predetermined fixed-percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

(b) Accounting for interest earned on grant funds. Pursuant to section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), a State will not be held accountable for interest earned on grant funds, pending their disbursement for grant purposes. A State, as defined in section 102 of the Intergovernmental Cooperation Act, means any one of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State. All grantees other than a State, as defined in this section, must return all interest earned on grant funds to the Federal Government.

(c) Grant closeout

(1) Date of final accounting. A grantee shall render, with respect to each approved project a full account, as provided herein, as of the date of termination of grant support. The Secretary may require other special and periodic accounting.

(2) Final settlement. There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of:

(i) Any amount not accounted for pursuant to paragraph (a) of this section; and

(ii) Any credits for earned interest pursuant to paragraph (b) of this section; and

(iii) Any other amounts due pursuant to Subparts F, M, and O of 45 CFR Part 74.

Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by setoff or other action as provided by law.

86.19—HUMAN SUBJECTS; ANIMAL WELFARE

No grant award may be made under this subpart unless the applicant has complied with:

(a) 45 CFR Part 46 pertaining to the protection of human subjects; and

(b) Chapter 1-43 of the Department Grants Administration Manual [2] concerning animal welfare.

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[2] The Department Grants Administration Manual is available for inspection at the Public Information Office of the several Department Regional Offices and available for purchase at the Government Printing Office, GPO Document No. 894-523.

86.20—ADDITIONAL CONDITIONS

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved project, the interests of public health, or the conservation of grant funds.

86.21—APPLICABILITY OF 45 CFR PART 74

The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, shall apply to all grants under this part to States and local governments as those terms are defined in Subpart A of that Part 74. The relevant provisions of the following subparts of Part 74 shall also apply to grants to all grantee organizations under this part:

Subpart	Subject
A	General
B	Cash depositories.
C	Bonding and insurance.
D	Retention and custodial requirements for records.
F	Grant-related income.
G	Matching and cost sharing.
K	Grant payment requirements.
L	Budget revision procedures.
M	Grant closeout: Suspension, and termination.
O	Property.
Q	Cost principles.

SUBPART C—OCCUPATIONAL SAFETY AND HEALTH DIRECT TRAINEESHIPS

86.30—NATURE AND PURPOSE OF DIRECT TRAINEESHIPS

A direct traineeship is an award of funds directly from the Federal Government to an individual (herein called the "trainee") for his subsistence and other expenses during a period in which he is acquiring training (a) in the occupational safety and health professions, (b) for research relating to occupational safety and health, or (c) for teaching in occupational safety and health.

86.31—ELIGIBILITY; MINIMUM REQUIREMENTS

In order to be eligible for an award under this subpart an applicant must:

(a) Have been accepted by a public or other nonprofit institution for the purpose of the activity for which the traineeship is sought.

(b) Be a U.S. citizen, an alien lawfully admitted to the United States for permanent residence or a permanent resident of Guam, American Samoa, or the Trust Territory of the Pacific Islands.

86.32—APPLICATION FOR DIRECT TRAINEESHIP

An application for a direct traineeship under this subpart shall be submitted to the Secretary at such times and in such form and manner as he may prescribe.[1] In addition to the information supplied by the applicant in his application, such further information may be required as is necessary to determine his or her qualifications.

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[1] Applications and instructions may be obtained from the Office of Extramural Activities, National Institute for Occupational Safety and Health, U.S. Post Office & Courthouse, Cincinnati, OH 45202.

86.33—HUMAN SUBJECTS: ANIMAL WELFARE

Where the application is for training at a non-Federal institution, no award may be made under this subpart unless said institution has complied with:

(a) 45 CFR Part 46 pertaining to the protection of human subjects; and

(b) Chapter 1–43 of the Department Grants Administration Manual [2] concerning animal welfare.

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[2] The Department Grants Administration Manual is available for inspection at the Public Information Office of the several Department Regional Offices and available for purchase at the Government Printing Office, GPO Document No. 894-523.

86.34—EVALUATION AND AWARD OF DIRECT TRAINEESHIPS

Within the limits of funds available for such purpose and subject to the regulations of this part, the Secretary may award direct traineeships to those qualified applicants who are in his judgment best able to carry out the purpose of the traineeships taking into consideration the need for training in the area of study specified in the application.

86.35—PAYMENTS

(a) Individuals receiving awards shall be entitled to such stipends and allowances as the Secretary may designate, taking into account such factors as the needs of the program, the cost of living, and the availability of funds (Note: These are prescribed in Chapter 3-140 of the Department Grants Administration Manual [2]).

(b) Payments of stipends and allowances will, at the discretion of the Secretary, be made directly to the trainee or to the sponsoring institution for payment directly to the trainee.

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[2] The Department Grants Administration Manual is available for inspection at the Public Information Office of the several Department Regional Offices and available for purchase at the Government Printing Office, GPO Document No. 894-523.

86.36—DURATION AND CONTINUATION

Direct traineeship awards may be made for varying periods not in excess of 2 years. The Secretary may make one or more continuation awards for an additional period if he finds that satisfactory progress is being made toward accomplishment of the purpose of the initial traineeship award. Additional support may be provided on appropriate justification after expiration of the period of support in the previous award.

86.37—TERMS AND CONDITIONS

All direct traineeship awards shall be subject to the following terms and conditions:

(a) Training must be carried out at an institution found by the Secretary to provide a well-rounded course of instruction in the particular area of training for which the traineeship is awarded.

(b) No direct traineeship may be utilized to compensate any trainee for personal services or employment on behalf of the United States or any person.

86.38—ACCOUNTABILITY

Accountability for payments will be subject to such requirements as may be specified by the Secretary.

86.39—TERMINATION OF DIRECT TRAINEESHIP

(a) The Secretary may terminate a direct traineeship at any time upon request of the trainee.

(b) After reasonable notice to the trainee and an opportunity for the presentation of the trainee's views and relevant evidence, the Secretary may terminate any direct traineeship prior to the date it would otherwise expire upon a determination that the trainee's performance is unsatisfactory, that the trainee is no longer attending the sponsoring institution, or that he or she is unfit or unable to carry out the purpose of the traineeship.

(c) The views and evidence of the trainee shall be presented in writing unless the Secretary determines that an oral presentation is desirable.

PART 87

GRANTS FOR RESEARCH AND DEMONSTRATIONS RELATING TO OCCUPATIONAL SAFETY AND HEALTH

SUBPART A—APPLICABILITY AND DEFINITIONS

87.1 Applicability.
87.2 Definitions.

SUBPART B—ELIGIBILITY, AWARD, AND TERMINATION

87.10 Nature and purpose of grant.
87.11 Eligibility.
87.12 Application for grant.
87.13 Evaluation and disposition of applications.
87.14 Grant awards.
87.15 Termination and withholding of payments.

SUBPART C—GRANT CONDITIONS—OBLIGATIONS OF GRANTEE

87.20 Use of funds: changes in project and project period.
87.21 Principal investigators: project directors.
87.22 Inventions or discoveries.
87.23 Publications and copyright.
87.24 Records, reports, inspections.
87.25 Nondiscrimination.
87.26 Other conditions.

SUBPART D—GRANTEE ACCOUNTABILITY

87.30 Date of final accounting.
87.31 Accounting for grant award payments.
87.32 Accounting for equipment.
87.33 Accounting for grant related income.
87.34 Final settlement.

AUTHORITY: The provisions of this Part 87 issued under sec. 8(g), 84 Stat. 1600; 29 U.S.C. 657(g).

SOURCE: The provisions of this Part 87 appear at 37 F.R. 22864, Oct. 26, 1972 unless otherwise noted.

SUBPART A—APPLICABILITY AND DEFINITIONS

87.1—APPLICABILITY

The regulations of this part apply to grants awarded pursuant to section 20(a)(1) of the Occupational Safety and Health Act of 1970 for the support of research, experiments, demonstrations, and studies related to occupational safety and health.

87.2—DEFINITIONS

Any term defined in the Occupational Safety and Health Act of 1970 and not defined below shall have the meaning given it in the Act. As used in this part—

(a) "Act" means the Occupational Safety and Health Act of 1970.

(b) "Nonprofit agency or institution" means an agency, corporation, or association no part of the net earnings of which inures or may lawfully inure to the benefit of any shareholder or individual.

(c) "Principal investigator" for a research project or the "project director" for a demonstration project means a single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the scientific and technical direction of the project.

(d) "Project period" means the period of time, not exceeding 7 years in the case of a research project, or 5 years in the case of a demonstration project, which the Secretary finds is reasonably required to initiate and conduct a project meriting support by means of one or more grants within the scope of §87.10, except that such period may be extended by the Secretary beyond 7 or 5 years respectively, solely to permit continuation or completion of the same approved project by use of funds previously awarded but remaining unencumbered by the grantee at the end of such years. The project period may include the time required for initial staffing and acquisition of facilities and for the preparation and publication of the results of the project. The approval and support of a research or demonstration project for the maximum project period shall not preclude additional support of that project beyond such period if such support of the continued project is requested, evaluated and approved on the same basis as a new or initial application in accordance with §§ 87.12 and 87.13.

(e) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved may be delegated.

SUBPART B—ELIGIBILITY, AWARD, AND TERMINATION

87.10—NATURE AND PURPOSE OF GRANT

(a) A research project grant is the award by the Secretary of funds to an eligible institution or organization hereinafter called the "grantee," to assist in meeting the costs of conducting an identified activity or program hereinafter termed the "project" that is intended and designed to establish, discover, develop, elucidate, or confirm information or the underlying mechanisms relating to occupational safety or health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety or health problems.

(b) A demonstration project grant is the award by the Secretary of funds to an eligible institution or organization hereinafter called the "grantee," to assist in meeting the costs of conducting an identified activity or program hereinafter termed the "project" that is intended and designed to demonstrate, either on a pilot or full-scale basis, the technical or economic feasibility or application of:

(1) A new or improved occupational safety or occupational health procedure, method, technique, or system; or

(2) An innovative method, technique, or approach for dealing with occupational safety or health problems.

87.11—ELIGIBILITY

(a) Eligible applicants.

Any public or nonprofit private agency or institution is eligible to apply for a grant under this part, except Federal agencies or institutions not specifically authorized by law to receive such a grant.

(b) Projects eligible for research grants.

Any project found by the Secretary to be a research project within the meaning of § 87.10(a) shall be eligible for a grant award. Eligible projects may consist of laboratory, clinical, population, field, statistical, basic, applied, or other types of investigations, studies or experiments, or combinations thereof, and may either be limited to one, or a particular aspect of a, problem or subject, or may consist of two or more related problems or subjects for concurrent or consecutive investigation and involving multiple disciplines, facilities, and resources.

(c) Projects eligible for demonstration grants.

Any project found by the Secretary to be a demonstration project within the meaning of §87.10(b) shall be eligible for a grant award. Eligible projects may consist of, but are not limited to, feasibility studies, design, operation, maintenance, evaluations of a new or improved procedure, method, technique, or system, and plans and specifications in connection therewith.

87.12—APPLICATION FOR GRANT

(a) An application for a grant under this part shall be submitted to the Secretary at such time and in such form and manner as the Secretary may prescribe.[1] Such application shall set forth the nature, duration, purpose, and plan of the research or demonstration project, the name and qualifications of the principal investigator or project director and the qualifications of the principal staff members to be responsible for the project, the total facilities and resources that will be available, a justification of the amount of grant funds requested, and such other pertinent information as the Secretary may require.

(b) The application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award, including the regulations of this part.

[1] Applications are available upon request to the Office of Extramural Activities, NIOSH Room 8145, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202.

87.13—EVALUATION AND DISPOSITION OF APPLICATIONS

(a) Evaluation.

All applications filed in accordance with §87.12 shall be evaluated by the Secretary through such officers and employees and such experts or consultants engaged for this purpose as he determines are specially qualified in the areas of research or demonstration involved in the project. The Secretary's evaluation shall take into account, among other pertinent factors, the scientific merit and significance of the project, the competency of the proposed staff in relation to the type of research or demonstration involved, the feasibility of the project, the likelihood of its producing meaningful results, the proposed project period, the adequacy of the applicant's resources available for the project and the amount of grant funds necessary for completion.

(b) Disposition.

On the basis of his evaluation of an application puruant to paragraph (a) of this section the Secretary shall (1) approve, (2) defer because of either lack of funds or a need for further evaluation, or (3) disapprove, support of the proposed project in whole or in part. With respect to approved projects, the Secretary shall determine the project period during which the project may be supported. Any deferral or disapproval of an application shall not preclude its reconsideration or a reapplication.

87.14—GRANT AWARDS

(a) General.

Within the limits of funds available for such purpose, the Secretary shall award a grant to those applicants whose approved projects will in his judgment best promote the purposes of §87.10 on the basis of his evaluation under §87.13(a). The date specified by the Secretary as the beginning of the project period shall be no later than 9 months following the date of any initial or new award statement unless the Secretary finds that because of the nature of a project or the grantee's particular circumstances earlier assurance of grant support is required to initiate the project. All amounts awarded, whether provisional or otherwise, remain subject to accountability as provided under Subpart D of this part.

(b) The amount of any award shall be determined by the Secretary on the basis of his estimate of the sum necessary for all or a designated portion of direct project costs plus an additional amount for indirect costs, if any, which will be calculated by the Secretary either

(1) On the basis of his estimate of the actual indirect costs reasonably related to the project, or

(2) On the basis of a percentage of all, or a portion of, the estimated direct costs of the project when there are reasonable assurances that the use of such percentage will not exceed the approximate actual indirect costs. Such award may include an estimated provisional amount for indirect costs or for designated direct costs subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the amount properly expended by the grantee for provisional items has been determined by the Secretary: *Provided, however,* That no grant shall be made for an amount equal to the total cost as found necessary by the Secretary for the carrying out of the project. In determining the grantee's share of the project costs,

(i) Costs for which Federal grants from other sources have been or may be claimed or received, or

(ii) Costs used to match other Federal grants (except as may be otherwise provided by law), or

(iii) Costs to be met from the Federal share of grant related income (except as may be permitted by chapter 1-420 of the Department of Health, Education, and Welfare Grants Administration Manual[2]), may not be included.

(c) Except as may otherwise be provided by the regulations of this part, the identification of direct and indirect costs will be consistent with the generally accepted and established accounting practices that the grantee applies to its own activities and in conformance with the applicable principles set forth in chapters 1-76, 2-65, 2-66, and 5-60 of the Department of Health, Education, and Welfare Grants Administration Manual.

(d) All grant awards shall be in writing and shall set forth the amount of funds granted and the period for which support is recommended.

(e) Neither the approval of any project nor any grant award shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved project or portion thereof.

(f) Multiple, concurrent, initial awards.

Whenever a project involves a number of different but related problems, activities or disciplines so as to require evaluation by different groups, or whenever support for a project could be more effectively administered by separate handling of separate aspects of the project, the Secretary may evaluate and approve two or more concurrent applications each dealing with one or more specified aspects of the project, and he may make two or more concurrent grant awards with respect to such a project.

(g) Supplemental and continuation awards.

The Secretary may from time to time within the project period make additional grant awards with respect to any approved project continued without change except as provided in § 87.20(b) and (c) where he finds, on the basis of such progress and accounting reports as he may require, either that

(1) The amount of any prior award was less than the amount necessary to carry out the approved project within the period used for estimating the amount of such prior award (a supplemental grant), or

(2) The progress made within the period with respect to which any prior awards were made justifies support for an additional, specified portion or the remainder of the project period (a continuation grant).

The amount of any supplemental or continuation grant shall be determined as provided in paragraph (b) of this section.

(h) Payments.

The Secretary shall from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement for expenses to be incurred or incurred in theproject period, to the extent he determines such payments necessary to promote prompt initiation and advancement of the approved project. All such payments shall be recorded by the grantee in accounting records separate from all other fund accounts, including funds derived from other grant awards. Amounts paid shall be available for expenditure by the grantee in accordance with the regulations of this part throughout the project period subject to such limitations as the Secretary may prescribe.

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[2] The Department Grants Administration Manual is available for inspection at the Public Information Office of the Several Department Regional Offices and available for purchase at the Government Printing Office, GPO document No. 894-523.

87.15—TERMINATION AND WITHHOLDING OF PAYMENTS

(a) Discontinuance by agreement.

Whenever in the judgment of the Secretary and the grantee, continuation of an approved project would produce results of no value in furthering the purposes of § 87.10, grant support shall be terminated.

(b) Termination by Secretary.

Whenever the Secretary finds that a grantee has failed in a material respect to comply with the regulations of this part or the terms of the grant, he may, after affording the grantee reasonable notice and an opportunity to present its views and evidence, withhold further payments and take such other action, including the termination of the grant, as he finds appropriate to carry out the purposes of the regulations of this part. The views and evidence of the grantee shall be (1) presented in writing unless the Secretary determines that an oral presentation is desirable, and (2) confined to matters relevant to whether the grantee has failed in a material respect to comply with the regulations of this part or the terms of the grant.

(c) Termination by the grantee.

A grantee may at any time terminate or cancel its conduct of an approved project by notifying the Secretary in writing setting forth the reasons for such termination.

(d) Accounting.

Upon any termination or transfer of a grant from a grantee under § 87.21, the grantee shall render an accounting pursuant to Subpart D of this part: *Provided, however,* That to the extent the termination is due in the judgment of the Secretary to no fault of the grantee, credit shall be allowed for the amount required to settle at minimum costs any noncancellable obligations properly incurred by the grantee prior to receipt of notice of termination.

SUBPART C—GRANT CONDITIONS—OBLIGATIONS OF GRANTEE

87.20—USE OF FUNDS; CHANGES IN PROJECT AND PROJECT PERIOD

(a) Use of funds.

Any funds granted pursuant to §87.14 shall be expended by the grantee solely for carrying out the approved project in accordance with the regulations of this part, and, except as otherwise may be provided in this part, the applicable cost principles set forth in the Department of Health, Education, and Welfare Grants Administration Manual. The grantee may not in whole or in part delegate or transfer this responsibility for the use of such funds to any other person.

(b) Changes in project.

The permissible changes by the principal investigator or the project director in the approved project shall be limited to changes in methodology, approach, or other aspects of the project that would expedite achievement of the project's objectives, including changes that grow out of the approved project and serve the best scientific strategy. Whenever the grantee and the principal investigator or project director are uncertain as to whether a change complies with these provisions, the question shall be referred to the Secretary for a final determination. Other changes in the project may be made only with the prior approval of the Secretary.

(c) Changes in project period.

The project period determined pursuant to § 87.13(b) may be extended by the Secretary, with or without additional grant support, for such an additional period as he determines may be required to complete, or fulfill the purposes of the approved project provided the total period as extended does not exceed 7 years, in the case of a research project or 5 years in the case of a demonstration project, except with respect to the grantee's unencumbered balances as provided in §87.2(d).

87.21—PRINCIPAL INVESTIGATORS; PROJECT DIRECTORS

All grant awards shall be subject to the condition that the principal investigator or project director designated in the application as responsible for the conduct of the approved project shall continue responsible for the duration of the project period. Whenever any such investigator or director shall become unavailable for any reason to discharge this responsibility, the grant shall be terminated unless:

(a) The grantee replaces such investigator or director with another person found by the Secretary to be qualified to direct and conduct the approved project, or

(b) The Secretary, upon application in accordance with the provisions of § 87.12, transfers the grant to any agency or institution eligible under §87.11 for continuation of the currently supported project provided he finds that the change in the conduct of the project is consonant with the previous evaluation and approval of the project under §87.13.

87.22—INVENTIONS OR DISCOVERIES

Any grant award pursuant to §87.14 is subject to the regulations of the Department of Health, Education, and Welfare as set forth in 45 CFR Parts 6 and 8, as amended. Such regulations shall apply to any activity for which grant funds are in fact used whether within the scope of the project as approved or otherwise. Appropriate measures shall be taken by the grantee and by the Secretary to assure that no contracts, assignments, or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the supported activity are aware of and comply with such obligation. Laboratory notes, related technical data and information pertaining to inventions or discoveries shall be maintained for such periods, and filed with or otherwise made available to the Secretary or those he may designate at such times and in such manner, as he may determine necessary to carry out such Department regulations.

87.23—PUBLICATIONS AND COPYRIGHT

Except as may otherwise be provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films, or similar materials developed or resulting from a research or demonstration project supported by a grant under this part, subject, however, to a royaltyfree, nonexclusive license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

87.24—RECORDS, REPORTS, INSPECTIONS

(a) Records and reports.

Each grant award pursuant to §87.14 shall be subject to the condition that the grantee shall maintain such progress and fiscal records, and file with the Secretary such progress and fiscal reports relating to the conduct and results of the approved project and the use of grant funds as the Secretary may prescribe. Such records shall be retained, as follows:

(1) Records may be destroyed 3 years after the end of the budget period if the grantee has been notified of the completion of the Federal audit by such time.

(2) If the grantee has not been so notified, such records shall be retained until the grantee is notified of the completion of the Federal audit or until 5 years following the end of the budget period, whichever comes first.

(3) In all cases where audit questions have arisen before the expiration of such 5-year period, records shall be retained until resolution of all such questions.

(b) Inspection and audit.

Any application for a grant award filed pursuant to §87.12 shall constitute the consent of the applicant to inspections at reasonable times by persons designated by the Secretary of the facilities, equipment and other resources of the applicant and to interviews with principal staff members to the extent such resources and personnel will be, or are, involved in the project. In addition, the acceptance of any grant award under §87.14 shall constitute the consent of the grantee to inspections and fiscal audit by such persons of the supported activity and of progress and fiscal records relating to the approved project.

87.25—NONDISCRIMINATION

Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) and in particular section 601 of such act which provides that no person in the United States shall, on account of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Regulations implementing title VI have been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80) and apply with respect to research or demonstration project grants awarded under this part.

87.26—OTHER CONDITIONS

The Secretary may with respect to any grant award or class of awards impose additional conditions prior to or at the time of any award when in his judgment such conditions are necessary to assure or protect advancement of the approved project or the conservation of grant funds.

SUBPART D—GRANTEE ACCOUNTABILITY

87.30—DATE OF FINAL ACCOUNTING

In addition to such other accounting as the Secretary may require, a grantee shall render, with respect to each approved project, a full accounting as provided herein, as of a termination date which shall be either:

(a) The end of the project period as determined pursuant to §87.13(b) or its extension as provided in §87.20(c), or

(b) The date of any termination of grant support as provided in §87.15, whichever first occurs.

87.31—ACCOUNTING FOR GRANT AWARD PAYMENTS

With respect to each approved project the grantee shall account for the sum total of all amounts paid under § 87.14(h) by presenting or otherwise making available vouchers or any other evidence satisfactory to the Secretary of expenditures for direct and indirect costs meeting the requirements of § 87.14: *Provided, however,* That where the amount awarded for indirect cost was based on a predetermined fixed-percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

87.32—ACCOUNTING FOR EQUIPMENT

As used in this section the term "equipment" means an article of property procured or fabricated which is complete in itself, is of a durable nature, and has an expected service life of more than 1 year. Equipment on hand on the date of termination for which accounting is required in accordance with the procedures set forth in chapter 1-410-50 of the Department of Health, Education, and Welfare Grants Administration Manual shall be identified and reported by the grantee in accordance with such procedures, and, accounted for, or accountability waived, by one or a combination of the following methods, as determined by the Secretary:

(a) Retention of equipment for other occupational safety and health projects.

Equipment may be used, without adjustment of accounts, on other grant supported projects (whether or not federally supported) within the scope of the **Act**, and no other accounting for such equipment shall be required; *Provided, however,*

(1) That during such period of use no charge for depreciation, amortization or for other use of the equipment shall be made against any existing or future Federal grant or contract, and

(2) If, within the period of its useful life, the equipment is transferred by sale or otherwise for use outside the scope of the Act, the Federal portion of the fair market value at the time of transfer shall be refunded to the Federal Government.

(b) Sale or other disposition of equipment, crediting of proceeds or value.

The equipment may be sold by the grantee and the net proceeds of the sale credited to the grant account for project use, or they may be used or disposed or in any manner by the grantee by crediting to the grant account the Federal share of the fair market value on the termination date. To the extent equipment purchased from grant funds is used for credit or trade-in on the purchase of new equipment, the accounting obligation shall apply to the same extent to such new equipment.

(c) Return or transfer of equipment.

The equipment may be returned to the Federal Government by the grantee or, in accordance with the provisions of chapter 1-410-50B of the Department of Health, Education, and Welfare Grants Administration Manual, may be transferred to another grantee for the purpose of continuing the project for which the equipment was purchased.

(d) Waiver of equipment accountability.

Where the grantee is an organization within the terms of the Act of September 6, 1958 (72 Stat. 1793; Public Law 85-934), the obligation to account for the value of any equipment may be waived by the Secretary as provided by such Act.

87.33—ACCOUNTING FOR GRANT RELATED INCOME

(a) Interest.

Pursuant to section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), a State will not be held accountable for interest earned on grant funds, pending their disbursement for grant purposes. A State, as defined in section 102 of the Intergovernmental Cooperation Act, means any one of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State. All grantees other than a State, as defined in this subsection, must return all interest earned on grant funds to the Federal Government.

(b) Royalties.

Royalties earned from publications or similar material produced from a grant must first be used to reduce the Federal share of the grant to cover the costs of publishing or producing the materials. Royalties in excess of the costs of publishing or producing the materials shall be distributed as in paragraph (c) of this section.

(c) Other income.

Other income earned by the grantee shall be disposed of in accordance with one of the alternatives specified in Chapter 1-420 of the Grants Administration Manual as determined by the Secretary in the grant award.

87.34—FINAL SETTLEMENT

There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of:

(a) Any amount not accounted for pursuant to §87.31:

(b) Any credits for material on hand as provided in §87.32:

(c) Any credits for earned interest pursuant to §87.33(a):

(d) Any other settlements required pursuant to §87.33(b) and (c).

Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by set off or other action as provided by law.

Public Law 91-596
91st Congress, S. 2193
December 29, 1970

An Act

84 STAT. 1590

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Occupational Safety and Health Act of 1970".

Occupational Safety and Health Act of 1970.

CONGRESSIONAL FINDINGS AND PURPOSE

Sec. (2) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Secretary" mean the Secretary of Labor.

(2) The term "Commission" means the Occupational Safety and Health Review Commission established under this Act.

(3) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof.

(4) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

(6) The term "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.

(7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(8) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which (1), has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested

and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered and (3) has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.

(10) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this Act.

(11) The term "Committee" means the National Advisory Committee on Occupational Safety and Health established under this Act.

(12) The term "Director" means the Director of the National Institute for Occupational Safety and Health.

(13) The term "Institute" means the National Institute for Occupational Safety and Health established under this Act.

(14) The term "Workmen's Compensation Commission" means the National Commission on State Workmen's Compensation Laws established under this Act.

APPLICABILITY OF THIS ACT

SEC. 4. (a) This Act shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no United States district courts having jurisdiction.

67 Stat. 462.
43 USC 1331 note.

(b)(1) Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

73 Stat. 688.

(2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), Public Law 91-54, Act of August 9, 1969 (40 U.S.C. 333), Public Law 85-742, Act of August 23, 1958 (33 U.S.C. 941), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.) are superseded on the effective date of corresponding standards, promulgated under this Act, which are determined by the Secretary to be more effective. Standards issued under the laws listed in this paragraph and in effect on or after the effective date of this Act shall be deemed to be occupational safety and health standards issued under this Act, as well as under such other Acts.

49 Stat. 2036.
79 Stat. 1034.
83 Stat. 96.
72 Stat. 835.
79 Stat. 845;
Ante, p. 443.

(3) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws.

Report to Congress.

(4) Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

DUTIES

Sec. 5. (a) Each employer—

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

80 Stat. 381;
81 Stat. 195.
5 USC 500.

Sec. 6. (a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

Advisory
committee,
recommendations.

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

Publication in Federal Register.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

Hearing, notice.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

Publication in Federal Register.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

Toxic materials.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

Temporary variance order.

(6)(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Notice, hearing. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: *Provided*, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. Renewal. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. Time limitation. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for a temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health, Education, and Welfare certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health, Education, and Welfare designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

Labels, etc. (7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Protective equipment, etc. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In

Medical examinations.

addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health, Education, and Welfare, such examinations may be furnished at the expense of the Secretary of Health, Education, and Welfare. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health, Education, and Welfare, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

80 Stat. 383.

Publication in Federal Register.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

Temporary standard.
Publication in Federal Register.
80 Stat. 381;
81 Stat. 195.
5 USC 500.

(c)(1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger.

Time limitation.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with section 6(b) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

Variance rule.

(d) Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

Publication in Federal Register.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

Petition for judicial review.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards.

ADVISORY COMMITTEES; ADMINISTRATION

Establishment; membership.

SEC. 7. (a)(1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members appointed by the Secretary, four of whom are to be designated by the Secretary of Health, Education, and Welfare, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and composed of representatives of manangement, labor, occupational safety and occupational health professions, and of the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

80 Stat. 378. 5 USC 101.

(2) The Committee shall advise, consult with, and make recommendations to the Secretary and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

Public transcript.

(3) The members of the Committee shall be compensated in accordance with the provisions of section 3109 of title 5, United States Code.

80 Stat. 416.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(b) An advisory committee may be appointed by the Secretary to assist him in his standard-setting functions under section 6 of this Act. Each such committee shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare, and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards-producing organizations, but the number of persons so appointed to any such advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 3109 of title 5, United States Code. The Secretary shall pay to any State which is the employer of a member of such a committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

80 Stat. 416.

Recordkeeping.

(c) In carrying out his responsibilities under this Act, the Secretary is authorized to—

(1) use, with the consent of any Federal agency, the services, facilities, and personnel of such agency, with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 under section 5332 of title 5, United States Code, including traveltime, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

Ante, p. 198-1.

80 Stat. 499;
83 Stat. 190.

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

SEC. 8. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

Subpoena power.

(b) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

Recordkeeping.

(c)(1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health, Education, and Welfare, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

Work-related deaths, etc.; reports.

(2) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Secretary, the Secretary of Health, Education, and Welfare, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f)(1) Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing of such determination.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which they have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

Reports, publication.

(g)(1) The Secretary and Secretary of Health, Education, and Welfare are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.

Rules and regulations.

(2) The Secretary and the Secretary of Health, Education, and Welfare shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.

CITATIONS

SEC. 9. (a) If, upon inspection or investigation, the Secretary or his authorized representative believes that an employer has violated a requirement of section 5 of this Act, of any standard, rule or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Secretary may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

(b) Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Secretary, at or near each place a violation referred to in the citation occurred.

Limitation. (c) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

PROCEDURE FOR ENFORCEMENT

SEC. 10. (a) If, after an inspection or investigation, the Secretary issues a citation under section 9(a), he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 17 and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If, within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) within such time, the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(b) If the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the Secretary's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the Secretary, the employer fails to notify the Secretary that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(c) If an employer notifies the Secretary that he intends to contest a citation issued under section 9(a) or notification issued under subsection (a) or (b) of this section, or if, within fifteen working days of the issuance of a citation under section 9(a), any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section). The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

80 Stat. 384.

JUDICIAL REVIEW

SEC. 11. (a) Any person adversely affected or aggrieved by an order of the Commission issued under subsection (c) of section 10 may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evi-

72 Stat. 941;
80 Stat. 1323.

dence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

62 Stat. 928.

(b) The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 10, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 17, in addition to invoking any other available remedies.

(c) (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph 2 of this subsection.

THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Establishment; membership.

SEC. 12. (a) The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this Act. The President shall designate one of the members of the Commission to serve as Chairman.

Terms.

(b) The terms of members of the Commission shall be six years except that (1) the members of the Commission first taking office shall serve, as designated by the President at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

80 Stat. 460.

(c)(1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(57) Chairman, Occupational Safety and Health Review Commission."

Ante, p. 776.

(2) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(94) Members, Occupational Safety and Health Review Commission."

Location.

(d) The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

(e) The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.

5 USC 5101, 5331.
Ante, p. 198-1.

Quorum.

(f) For the purpose of carrying out its functions under this Act, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

Public records.

(g) Every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public. The Commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings. Unless the Commission has adopted a different rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure.

28 USC app.

(h) The Commission may order testimony to be taken by deposition in any proceedings pending before it at any state of such proceeding. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(i) For the purpose of any proceeding before the Commission, the provisions of section 11 of the National Labor Relations Act (29 U.S.C. 161) are hereby made applicable to the jurisdiction and powers of the Commission.

61 Stat. 150;
Ante, p. 930.

Report. (j) A hearing examiner appointed by the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such hearing examiner by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the hearing examiner shall become the final order of the Commission within thirty days after such report by the hearing examiner, unless within such period any Commission member has directed that such report shall be reviewed by the Commission.

(k) Except as otherwise provided in this Act, the hearing examiners shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5, United States Code. Each hearing examiner shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code. 80 Stat. 453. Ante, p. 198-1.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

SEC. 13. (a) The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(b) Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Act. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days. 28 USC app.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) If the Secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, might bring an action against the Secretary in the United States district court for the district in which the imminent danger is alleged to exist or the employer has its principal office, or for the District of Columbia, for a writ of mandamus to compel the Secretary to seek such an order and for such further relief as may be appropriate.

REPRESENTATION IN CIVIL LITIGATION

SEC. 14. Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General. 80 Stat. 613.

CONFIDENTIALITY OF TRADE SECRETS

SEC. 15. All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, 62 Stat. 791. except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

VARIATIONS, TOLERANCES, AND EXEMPTIONS

SEC. 16. The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

PENALTIES

SEC. 17. (a) Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than $10,000 for each violation.

(b) Any employer who has received a citation for a serious violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, shall be assessed a civil penalty of up to $1,000 for each such violation.

(c) Any employer who has received a citation for a violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of regulations prescribed pursuant to this Act, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to $1,000 for each such violation.

(d) Any employer who fails to correct a violation for which a citation has been issued under section 9(a) within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than $1,000 for each day during which such failure or violation continues.

(e) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both.

(f) Any person who gives advance notice of any inspection to be conducted under this Act, without authority from the Secretary or his designees, shall, upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or by both.

(g) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

65 Stat. 721; 79 Stat. 234. (h)(1) Section 1114 of title 18, United States Code, is hereby amended by striking out "designated by the Secretary of Health, Education, and Welfare to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act" and inserting in lieu thereof "or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions".

62 Stat. 756. (2) Notwithstanding the provisions of sections 1111 and 1114 of title 18, United States Code, whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111, shall be punished by imprisonment for any term of years or for life.

(i) Any employer who violates any of the posting requirements, as prescribed under the provisions of this Act, shall be assessed a civil penalty of up to $1,000 for each violation.

(j) The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(l) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

STATE JURISDICTION AND STATE PLANS

SEC. 18. (a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6.

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 8, and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

Notice of hearing.

(d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under sections 8, 9, 10, 13, and 17 with respect to comparable standards promulgated under section 6, for the period specified in the next sentence. The Secretary may exercise the authority referred to above until he determines, on the basis of actual operations under the

State plan, that the criteria set forth in subsection (c) are being applied, but he shall not make such determination for at least three years after the plan's approval under subsection (c). Upon making the determination referred to in the preceding sentence, the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination.

Continuing evaluation.

(f) The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

Plan rejection, review.

(g) The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

72 Stat. 941;
80 Stat. 1323.
62 Stat. 928.

(h) The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from the date of enactment of this Act, whichever is earlier.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

SEC. 19. (a) It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall (after consultation with representatives of the employees thereof)—

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 6;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

Recordkeeping.

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;

(4) consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a)(3) of this section; and

Annual report.

(5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902(e)(2) of title 5, United States Code.

80 Stat. 530.

Report to President.

Report to Congress.

(b) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a)(5) of this section, together with his evaluations of and recommendations derived from such reports. The President shall transmit annually to the Senate and the House of Representatives a report of the activities of Federal agencies under this section.

(c) Section 7902(c)(1) of title 5, United States Code, is amended by inserting after "agencies" the following: "and of labor organizations representing employees".

Records, etc.; availability.

(d) The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a)(3) and (5) of this section unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy.

RESEARCH AND RELATED ACTIVITIES

SEC. 20. (a)(1) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

(2) The Secretary of Health, Education, and Welfare shall from time to time consult with the Secretary in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria, including criteria identifying toxic substances, enabling the Secretary to meet his responsibility for the formulation of safety and health standards under this Act; and the Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria as will effectuate the purposes of this Act.

(3) The Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments, and any other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.

(4) The Secretary of Health, Education, and Welfare shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that

best copy available

which is otherwise provided for in the operating provisions of this Act. The Secretary of Health, Education, and Welfare shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.

Toxic substances, records.

(5) The Secretary of Health, Education, and Welfare, in order to comply with his responsibilities under paragraph (2), and in order to develop needed information regarding potentially toxic substances or harmful physical agents, may prescribe regulations requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents which the Secretary of Health, Education, and Welfare reasonably believes may endanger the health or safety of employees. The Secretary of Health, Education, and Welfare also is authorized to establish such programs of medical examinations and tests as may be necessary for determining the incidence of occupational illnesses and the susceptibility of employees to such illnesses. Nothing in this or any other provision of this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. Upon the request of any employer who is required to measure and record exposure of employees to substances or physical agents as provided under this subsection, the Secretary of Health, Education, and Welfare shall furnish full financial or other assistance to such employer for the purpose of defraying any additional expense incurred by him in carrying out the measuring and recording as provided in this subsection.

Medical examinations.

Toxic substances, publication.

(6) The Secretary of Health, Education, and Welfare shall publish within six months of enactment of this Act and thereafter as needed but at least annually a list of all known toxic substances by generic family or other useful grouping, and the concentrations at which such toxicity is known to occur. He shall determine following a written request by any employer or authorized representative of employees, specifying with reasonable particularity the grounds on which the request is made, whether any substance normally found in the place of employment has potentially toxic effects in such concentrations as used or found; and shall submit such determination both to employers and affected employees as soon as possible. If the Secretary of Health, Education, and Welfare determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard promulgated under section 6, the Secretary of Health, Education, and Welfare shall immediately submit such determination to the Secretary, together with all pertinent criteria.

Annual studies.

(7) Within two years of enactment of this Act, and annually thereafter the Secretary of Health, Education, and Welfare shall conduct and publish industrywide studies of the effect of chronic or low-level exposure to industrial materials, processes, and stresses on the potential for illness, disease, or loss of functional capacity in aging adults.

Inspections.

(b) The Secretary of Health, Education, and Welfare is authorized to make inspections and question employers and employees as provided in section 8 of this Act in order to carry out his functions and responsibilities under this section.

Contract authority.

(c) The Secretary is authorized to enter into contracts, agreements, or other arrangements with appropriate public agencies or private organizations for the purpose of conducting studies relating to his responsibilities under this Act. In carrying out his responsibilities under this subsection, the Secretary shall cooperate with the Secretary of Health, Education, and Welfare in order to avoid any duplication of efforts under this section.

(d) Information obtained by the Secretary and the Secretary of Health, Education, and Welfare under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.

Delegation of functions.

(e) The functions of the Secretary of Health, Education, and Welfare under this Act shall, to the extent feasible, be delegated to the Director of the National Institute for Occupational Safety and Health established by section 22 of this Act.

TRAINING AND EMPLOYEE EDUCATION

SEC. 21. (a) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and (2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall (1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this Act, and (2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

Establishment.

SEC. 22. (a) It is the purpose of this section to establish a National Institute for Occupational Safety and Health in the Department of Health, Education, and Welfare in order to carry out the policy set forth in section 2 of this Act and to perform the functions of the Secretary of Health, Education, and Welfare under sections 20 and 21 of this Act.

Director, appointment, term.

(b) There is hereby established in the Department of Health, Education, and Welfare a National Institute for Occupational Safety and Health. The Institute shall be headed by a Director who shall be appointed by the Secretary of Health, Education, and Welfare, and who shall serve for a term of six years unless previously removed by the Secretary of Health, Education, and Welfare.

(c) The Institute is authorized to—

(1) develop and establish recommended occupational safety and health standards; and

(2) perform all functions of the Secretary of Health, Education, and Welfare under sections 20 and 21 of this Act.

(d) Upon his own initiative, or upon the request of the Secretary or the Secretary of Health, Education, and Welfare, the Director is authorized (1) to conduct such research and experimental programs as he determines are necessary for the development of criteria for new and improved occupational safety and health standards, and (2) after consideration of the results of such research and experimental programs make recommendations concerning new or improved occupational safety and health standards. Any occupational safety and health standard recommended pursuant to this section shall immediately be forwarded to the Secretary of Labor, and to the Secretary of Health, Education, and Welfare.

(e) In addition to any authority vested in the Institute by other provisions of this section, the Director, in carrying out the functions of the Institute, is authorized to—

(1) prescribe such regulations as he deems necessary governing the manner in which its functions shall be carried out;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Institute and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(3) receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)), money and other property donated, bequeathed, or devised to the Institute with a condition or restriction, including a condition that the Institute use other funds of the Institute for the purposes of the gift;

(4) in accordance with the civil service laws, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this section;

(5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code; 80 Stat. 416.

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code; 83 Stat. 190.

(7) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this section, and such contracts or modifications thereof may be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or any other provision of law relating to competitive bidding;

(8) make advance, progress, and other payments which the Director deems necessary under this title without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(9) make other necessary expenditures.

Annual report to HEW, President, and Congress.

(f) The Director shall submit to the Secretary of Health, Education, and Welfare, to the President, and to the Congress an annual report of the operations of the Institute under this Act, which shall include a detailed statement of all private and public funds received and expended by it, and such recommendations as he deems appropriate.

GRANTS TO THE STATES

SEC. 23. (a) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 18 to assist them—

(1) in identifying their needs and responsibilities in the area of occupational safety and health,

(2) in developing State plans under section 18, or

(5) in developing plans for—

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) The Governor of the State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(d) Any State agency designated by the Governor of the State desiring a grant under this section shall submit an application therefor to the Secretary.

(e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health, Education, and Welfare, approve or reject such application.

(f) The Federal share for each State grant under subsection (a) or (b) of this section may not exceed 90 per centum of the total cost of the application. In the event the Federal share for all States under either such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 18 of this Act. The Federal share for each State grant under this subsection may not exceed 50 per centum of the total cost to the State of such a program. The last sentence of subsection (f) shall be applicable in determining the Federal share under this subsection.

Report to President and Congress.

(h) Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health, Education, and Welfare, transmit a report to the President and to the Congress, describing the experience under the grant programs authorized by this section and making any recommendations he may deem appropriate.

STATISTICS

SEC. 24. (a) In order to further the purposes of this Act, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this Act but shall not cover employments excluded by section 4 of the Act. The Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(b) To carry out his duties under subsection (a) of this section, the Secretary may—

(1) promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics;

(2) make grants to States or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics; and

(3) arrange, through grants or contracts, for the conduct of such research and investigations as give promise of furthering the objectives of this section.

(c) The Federal share for each grant under subsection (b) of this section may be up to 50 per centum of the State's total cost.

(d) The Secretary may, with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or political subdivision, with or without reimbursement, in order to assist him in carrying out his functions under this section.

Reports. (e) On the basis of the records made and kept pursuant to section 8(c) of this Act, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this Act.

(f) Agreements between the Department of Labor and States pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this Act shall remain in effect until superseded by grants or contracts made under this Act.

AUDITS

SEC. 25. (a) Each recipient of a grant under this Act shall keep such records as the Secretary or the Secretary of Health, Education, and Welfare shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary or the Secretary of Health, Education, and Welfare, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any grant under this Act that are pertinent to any such grant.

ANNUAL REPORT

SEC. 26. Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health, Education, and Welfare shall each prepare and submit to the President for transmittal to the Congress a report upon the subject matter of this Act, the progress toward achievement of the purpose of this Act, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports shall include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this Act, defining areas of emphasis for new criteria and standards; an evaluation of the degree of observance of applicable occupational safety and health standards, and a summary of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; description of cooperative efforts undertaken between Government agencies and other interested parties in the implementation of this Act during the preceding year; a progress report on the development of an adequate supply of trained manpower in the field of occupational safety and health, including estimates of future needs and the efforts being made by Government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this Act.

NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS

SEC. 27. (a)(1) The Congress hereby finds and declares that—

(A) the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workmen's compensation as well as an effective program of occupational health and safety regulation; and

(B) in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the labor force, increases in medical knowledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and the cost of living.

(2) The purpose of this section is to authorize an effective study and objective evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation for injury or death arising out of or in the course of employment.

(b) There is hereby established a National Commission on State Workmen's Compensation Laws. Establishment.

(c)(1) The Workmen's Compensation Commission shall be composed of fifteen members to be appointed by the President from among members of State workmen's compensation boards, representatives of insurance carriers, business, labor, members of the medical profession having experience in industrial medicine or in workmen's compensation cases, educators having specia' expertise in the field of workmen's compensation, and representatives of the general public. The Secretary, the Secretary of Commerce, and the Secretary of Health, Education, and Welfare shall be ex officio members of the Workmen's Compensation Commission: Membership.

(2) Any vacancy in the Workmen's Compensation Commission shall not affect its powers.

(3) The President shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Workmen's Compensation Commission.

Quorum. (4) Eight members of the Workmen's Compensation Commission shall constitute a quorum.

Study. (d)(1) The Workmen's Compensation Commission shall undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation. Such study and evaluation shall include, without being limited to, the following subjects: (A) the amount and duration of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon, (B) the amount and duration of medical benefits and provisions insuring adequate medical care and free choice of physician, (C) the extent of coverage of workers, including exemptions based on numbers or type of employment, (D) standards for determining which injuries or diseases should be deemed compensable, (E) rehabititation, (F) coverage under second or subsequent injury funds, (G) time limits on filing claims, (H) waiting periods, (I) compulsory or elective coverage, (J) administration, (K) legal expenses, (L) the feasibility and desirability of a uniform system of reporting information concerning job-related injuries and diseases and the operation of workmen's compensation laws, (M) the resolution of conflict of laws, extraterritoriality and similar problems arising from claims with multistate aspects, (N) the extent to which private insurance carriers are excluded from supplying workmen's compensation coverage and the desirability of such exclusionary practices, to the extent they are found to exist, (O) the relationship between workmen's compensation on the one hand, and old-age, disability, and survivors insurance and other types of insurance, public or private, on the other hand, (P) methods of implementing the recommendations of the Commission.

Report to President and Congress. (2) The Workmen's Compensation Commission shall transmit to the President and to the Congress not later than July 31, 1972, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.

Hearings. (e)(1) The Workmen's Compensation Commission or, on the authorization of the Workmen's Compensation Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings, take such testimony, and sit and act at such times and places as the Workmen's Compensation Commission deems advisable. Any member authorized by the Workmen's Compensation Commission may administer oaths or affirmations to witnesses appearing before the Workmen's Compensation Commission or any subcommittee or members thereof.

(2) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Workmen's Compensation Commission, upon request made by the Chairman or Vice Chairman, such information as the Workmen's Compensation Commission deems necessary to carry out its functions under this section.

(f) Subject to such rules and regulations as may be adopted by the Workmen's Compensation Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an executive director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule

80 Stat. 378.
5 USC 101.

5 USC 5101, 5331.

pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title, and

Ante, p. 198-1.

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

80 Stat. 416.

Contract authorization.

(g) The Workmen's Compensation Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

Compensation; travel expenses.

(h) Members of the Workmen's Compensation Commission shall receive compensation for each day they are engaged in the performance of their duties as members of the Workmen's Compensation Commission at the daily rate prescribed for GS-18 under section 5332 of title 5, United States Code, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Workmen's Compensation Commission.

Appropriation.

(i) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Termination.

(j) On the ninetieth day after the date of submission of its final report to the President, the Workmen's Compensation Commission shall cease to exist.

ECONOMIC ASSISTANCE TO SMALL BUSINESSES

72 Stat. 387;
83 Stat. 802.
15 USC 636.

SEC. 28. (a) Section 7(b) of the Small Business Act, as amended, is amended—

(1) by striking out the period at the end of "paragraph (5)" and inserting in lieu thereof "; and"; and

(2) by adding after paragraph (5) a new paragraph as follows:

"(6) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in the equipment, facilities, or methods of operation of such business in order to comply with the applicable standards promulgated pursuant to section 6 of the Occupational Safety and Health Act of 1970 or standards adopted by a State pursuant to a plan approved under section 18 of the Occupational Safety and Health Act of 1970, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of he Small Business Act, as amended, is amended by striking out "or (5)" after "paragraph (3)" and inserting a comma followed by "(5) or (6)".

80 Stat. 132.
15 USC 633.

(c) Section 4(c)(1) of the Small Business Act, as amended, is amended by inserting "7(b)(6)," after "7(b)(5),".

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(6) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

79 Stat. 556.
42 USC 3142.

ADDITIONAL ASSISTANT SECRETARY OF LABOR

SEC. 29. (a) Section 2 of the Act of April 17, 1946 (60 Stat. 91) as amended (29 U.S.C. 553) is amended by—

75 Stat. 338.

(1) striking out "four" in the first sentence of such section and inserting in lieu thereof "five"; and

(2) adding at the end thereof the following new sentence, "One of such Assistant Secretaries shall be an Assistant Secretary of Labor for Occupational Safety and Health.".

80 Stat. 462. (b) Paragraph (20) of section 5315 of title 5, United States Code, is amended by striking out "(4)" and inserting in lieu thereof "(5)".

ADDITIONAL POSITIONS

SEC. 30. Section 5108(c) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (8);

(2) striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (9) the following new paragraph:

"(10)(A) the Secretary of Labor, subject to the standards and procedures prescribed by this chapter, may place an additional twenty-five positions in the Department of Labor in GS-16, 17, and 18 for the purposes of carrying out his responsibilities under the Occupational Safety and Health Act of 1970;

"(B) the Occupational Safety and Health Review Commission, subject to the standards and procedures prescribed by this chapter, may place ten positions in GS-16, 17, and 18 in carrying out its functions under the Occupational Safety and Health Act of 1970."

EMERGENCY LOCATOR BEACONS

72 Stat. 775.
49 USC 1421. SEC. 31. Section 601 of the Federal Aviation Act of 1958 is amended by inserting at the end thereof a new subsection as follows:

"EMERGENCY LOCATOR BEACONS

"(d)(1) Except with respect to aircraft described in paragraph (2) of this subsection, minimum standards pursuant to this section shall include a requirement that emergency locator beacons shall be installed—

"(A) on any fixed-wing, powered aircraft for use in air commerce the manufacture of which is completed, or which is imported into the United States, after one year following the date of enactment of this subsection; and

"(B) on any fixed-wing, powered aircraft used in air commerce after three years following such date.

"(2) The provisions of this subsection shall not apply to jet-powered aircraft; aircraft used in air transportation (other than air taxis and charter aircraft); military aircraft; aircraft used solely for training purposes not involving flights more than twenty miles from its base; and aircraft used for the aerial application of chemicals."

SEPARABILITY

SEC. 32. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

APPROPRIATIONS

SEC. 33. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

EFFECTIVE DATE

SEC. 34. This Act shall take effect one hundred and twenty days after the date of its enactment.

Approved December 29, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1291 accompanying H.R. 16785 (Comm. on
Education and Labor) and No. 91-1765 (Comm. of
Conference).
SENATE REPORT No. 91-1282 (Comm. on Labor and Public Welfare).
CONGRESSIONAL RECORD, Vol. 116 (1970):
Oct. 13, Nov. 16, 17, considered and passed Senate.
Nov. 23, 24, considered and passed House, amended, in lieu
of H.R. 16785.
Dec. 16, Senate agreed to conference report.
Dec. 17, House agreed to conference report.

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OCCUPATIONAL SAFETY AND HEALTH STANDARDS, REGULATIONS, AND PROCEDURES

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Occupational Safety and Health Standards, Regulations, and Procedures are contained in six volumes. Volumes I, II, and III include standards for general industry, the maritime industry, and the construction industry, respectively. Volume IV includes all other regulations, rules, and procedures for implementing the Act. Volume V and Volume VI include procedures and guidelines for the conduct of compliance operations. The major parts and subparts of each volume are as follows:

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E Means of Egress

F Powered Platform, Manlifts, and Vehicle-Mounted Work Platforms

G Occupational Health and Environmental Control

H Hazardous Materials

I Personal Protective Equipment

J General Environmental Controls

K Medical and First Aid

L Fire Protection

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N Materials Handling and Storage

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